



Goldwin Smith.





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OF  
POLITICAL, CONSTITUTIONAL, STATISTICAL  
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FORMING  
A WORK OF UNIVERSAL REFERENCE

ON SUBJECTS OF  
CIVIL ADMINISTRATION, POLITICAL ECONOMY, FINANCE,  
COMMERCE, LAWS AND SOCIAL RELATIONS.

IN FOUR VOLUMES.

VOL. I.

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## ADVERTISEMENT.

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THE POLITICAL DICTIONARY (under which title the former edition of this work was published) was suggested by the consideration that the 'Penny Cyclopædia' contains a great number of articles on matters of Constitution, Political Economy, Trade and Commerce, Administration, and Law ; and that if these articles were so altered as to make them applicable to the present time, wherever alteration was necessary, and new articles were added, wherever there appeared to be a deficiency, a work might be made which would be generally useful.

The citizens of a Free State are or ought to be concerned about everything Political that may affect their own happiness and the condition of future generations. In a system like our own, which is founded on ancient institutions and usages, and has now for near eight centuries been in a course of growth and change, the relations of the several parts to one another become so complicated that it is difficult for any one man, however enlarged may be the range of his understanding, and however exact his judgment, to form a correct estimate of the whole of this present society of which he is a part. Such a knowledge can only be got by a combination of a knowledge of the past with the knowledge of the present ; in other words, by an historical exposition of all existing institutions that rest on an ancient foundation, and by a consideration of their actual condition.

The articles in this work combine both methods. The subjects are treated historically, whenever such a treatment is required ; and they are also presented in their actual condition, so far as that has been

modified by successive enactments, continued usage, or other circumstances.

The mass of matter that is available in Parliamentary Reports and other printed documents, for such purposes as have been here indicated, is such as no other nation ever possessed; as indeed no other has ever established an Empire that embraces so many remote countries, so many varied interests. These materials have been used for this work, so far as the limits of it rendered it possible to use them efficiently.

Some of the articles in this Dictionary have been reprinted from the 'Penny Cyclopædia' with little or no alteration, and some have been reprinted with such alterations as were required by the changes that have taken place within the last ten years. *Many articles are entirely new, and treat of important subjects which have never, so far as we know, been presented to English readers in the form of a cheap Dictionary, or indeed in any other form.*

It is perhaps hardly necessary to observe that most of the articles which are of a legal and historical character apply only to England; and, in some cases, to England and Ireland. Several however have been inserted in order to explain such of the institutions of Scotland as are matters of general interest.

In conclusion it may be stated that this is the only work of the kind in the English language. It contains a large amount of information on most political subjects which cannot be found in any other book adapted for general use; and though it does not profess to be a Law Dictionary, nor to be free from the errors which are unavoidable in any work of the kind, it contains legal information, both more copious and more exact than is given in some works which are entitled Law Dictionaries.

The Index contains the heads or titles of all the articles comprised

in the work, as well as many to which there are no separate articles corresponding, but as to which something is said under the heads referred to.

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In presenting this new edition the Publisher feels called upon to state, that it is an exact reprint of the previous one published by *Mr. Charles Knight*, at £1 16s., and that the only alteration is in the title and price.

*York Street, Sept. 1848.*

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# POLITICAL DICTIONARY.

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## ABATTOIR.

ABANDONMENT is a term used in marine insurance. Before a person who has insured a ship or goods can demand from an insurer or underwriter the stipulated compensation for a total loss of such ship or goods, he must *abandon* or relinquish to the insurer all his interest in any part of the property which may be saved.

ABATTOIR, the name given by the French to the public slaughter-houses which were established in Paris by a decree of Napoleon in 1810, and finished in 1818. There are three on the north, and two on the south side of Paris, not far from the barriers, and about two miles from the centre of the city. The cattle markets for the supply of Paris are several miles distant, and the cattle are driven from them round the exterior boulevards to the abattoirs, and consequently do not enter the city. The consumption of Paris in 1840 was 92,402 oxen, 437,359 sheep, 90,190 pigs, and 20,684 calves: the number of butchers, all of whom are required to take out a licence, does not much exceed five hundred. At one of the abattoirs each butcher has his slaughter-house, a place for keeping the meat, an iron rack for tallow, pans for melting it, and a place with convenience for giving cattle hay and water, and where they may be kept before being slaughtered. A fixed sum is charged for this accommodation, and in 1843 the fee was 6 francs for each ox, 4 fr. for a cow, 2 fr. for a calf, and 10 c. for a sheep. The income of the establishment, arising from these fees, the sale of manure, &c., was above 48,000*l.* in 1842. It is stated in Dulaure's 'Paris,' that the fee paid for each head of cattle

## ABATTOIR.

includes all the expenses of slaughtering; but a witness who was examined before a Parliamentary Committee on Smithfield Market, and who had visited Paris for the purpose of inspecting the abattoirs, says that the butchers employ their own men. Dulaure's account is probably correct. The butchers can have their cattle slaughtered at any hour of the night, but they must take away the meat at night. There is an inspector appointed at each abattoir, and means are taken to prevent unwholesome meat getting into consumption. There are slaughter-houses under public regulations in most of the continental cities, and those of New York and Philadelphia and some other of the cities of the American Union are, it is said, placed on a similar footing. The medical profession in France attach great importance to slaughter-houses being strictly regulated, and removed from the midst of the population.

The great cattle-market in Smithfield for the supply of London existed above five centuries ago, but the spot was at that time a piece of waste ground beyond the city, instead of being, as at present, surrounded by a dense population. In 1842 there were sold in Smithfield Market 175,347 cattle, and 1,468,960 sheep, and at least this number are annually slaughtered within the limits of the metropolis. There are slaughtermen who kill for other butchers frequently above a hundred head of cattle, and perhaps five or six hundred sheep every week; many butchers kill for themselves to a considerable extent; and there are few who have not accommodation for slaughtering and dressing a few sheep, either in the cellar underneath their shop, or in the rear of

their premises. The business of slaughtering cattle and sheep in London is conducted just in the way most convenient to the butcher, without reference to the convenience and comfort of the public. There are slaughter-houses for sheep within fifty yards of St. Paul's Church-yard, and within a hundred and fifty yards of Ludgate-street, one of the great thoroughfares of London. The fear of creating a nuisance, cognisable as such by the law, is in some measure a substitute for the vigilant inspectorship maintained in the public slaughter-houses on the continent; and those who slaughter cattle know that in proportion as their establishments are cleanly and well ventilated, it is easier to keep the meat in a proper state; but the ignorant, the careless, and those who cannot afford to improve the accommodation and convenience of their slaughter-houses, require to be placed under the restraint of positive regulations. A general police regulation on the subject is thought to be necessary by many persons. In the Report of the Parliamentary Committee on Smithfield Market, to which allusion has already been made, the question of establishing abattoirs in London is noticed. The butchers objected to them on account of the expenses to which they would be put by having to carry the meat to their shops; and they alleged also that the meat would not keep so well in consequence of being removed so soon after being killed. These objections apply in some degree to the present system, under which the great slaughtermen kill for the butchers of a certain district, though the district is certainly much smaller than would be attached to one of several abattoirs.

By 4 & 5 Henry VII. c. 3, butchers were prohibited from killing cattle within the walls of the city of London, on account of "the annoyance of corrupt airs engendered by occasion of blood and other foul things coming by means of slaughter of beasts and scalding of swine." In 1532-3 this act was partially repealed by 24 Hen. VIII. c. 16, the preamble of which recited that since the act 4 & 5 Hen. VII. the butchers of London had made drains to carry off the filth from

their slaughter-houses, and had adopted regulations for avoiding nuisances under the advice of the corporation of the city; and they also alleged that the cost of carrying and re-carrying meat made it dear. It was then enacted that the act aforesaid should not extend to butchers within the city, who may kill within the walls.

ABBEY (from the French *Abbaye*), a religious community presided over by an abbot or abess. When the superior was denominated a Prior, the establishment was called a priory; but there was latterly no real distinction between a priory and an abbey. The priories appear to have been all originally off-shoots from certain abbeys, to which they continued for some time to be regarded as subordinate. The wealthiest abbeys, in former times, were in Germany; and of all such foundations in the world the most splendid and powerful was that of Fulda, or Fulden, situated near the town of the same name in Franconia. This monastery, which belonged to the order of St. Benedict, was founded by St. Boniface, in the year 784. Every candidate for admission into the princely brotherhood was required to prove his nobility. The monks themselves elected their abbot from their own number; and that dignity became, by right of his office, Arch-Chancellor to the Empress, and Prince-Bishop of the diocese of Fulda. He claimed precedence over all the other abbots of Germany. One of the first effects of the Reformation, both in England and in Germany, was the destruction of the religious houses; in England their extinction was complete. [MONASTERY.]

In the early times of the French monarchy the term abbey was applied to a duchy or earldom, as well as to a religious establishment; and the dukes and counts called themselves abbots, although they remained in all respects secular persons. They took this title in consequence of the possessions of certain abbeys having been conferred upon them by the crown.

ABBOT, the title of the superior of certain establishments of religious persons of the male sex, thence called abbeys.

The word *abbot*, or *abbat*, as it has been sometimes written, comes from *abbatis*, the genitive of *abbas*, which is the Greek and Latin form of the Syriac *abba*, of which the original is the Hebrew *ab*, father. It is, therefore, merely an epithet of respect and reverence, and appears to have been at first applied to any member of the clerical order, just as the French 'père,' and the English 'father,' which have the same signification, still are in the Roman Catholic church. In the earliest age of monastic institutions, however, the monks were not priests; they were merely holy persons who retired from the world to live in common, and the abbot was that one of their number whom they chose to preside over the association. The general regulations for monasteries, monks, and abbots (Hegumeni) of the Emperor Justinian, in the sixth century, are contained in the Fifth Novel. In regard to general ecclesiastical discipline, all these communities were at this time subject to the bishop of the diocese, and even to the pastor of the parochial district within the bounds of which they were established. At length it began to be usual for the abbot, or, as he was called in the Greek Church, the Archimandrite (that is, the chief monk), or the Hegumenos (that is, the leader), to be in orders; and since the sixth century monks generally have been priests. In point of dignity an abbot is considered to stand next to a bishop; but there have been many abbots in different countries who have claimed almost an equality in rank with the episcopal order. A minute and learned account of the different descriptions of abbots may be found in Du Cange's Glossary, and in Carpentier's Supplement to that work. In England, according to Coke, there used to be twenty-six abbots (Fuller says twenty-seven), and two priors, who were lords of parliament, and sat in the House of Peers. These, sometimes designated Sovereigns, or General abbots, wore the mitre (though not exactly the same in fashion with that of the bishops), carried the crozier (but in their right hands, while the bishops carried theirs in their left), and assumed the episcopal style of lord. Some croziered

abbots, again, were not mitred, and others who were mitred were not croziered. Abbots who presided over establishments that had sent out several branches were styled cardinal-abbots. There were likewise in Germany prince-abbots, as well as prince-bishops. In early times we read of field-abbots (in Latin, *Abbatēs Milites*), and abbot-counts (*Abba-Comites*, or *Abbi-Comites*). These were secular persons, upon whom the prince had bestowed certain abbeys, for which they were obliged to render military service as for common fiefs. A remnant of this practice appears to have subsisted in our own country long after it had been discontinued on the Continent. Thus, in Scotland, James Stuart, the natural son of James V., more celebrated as the Regent Murray, was, at the time of the Reformation, prior of St. Andrew's, although a secular person. And the secularization of some of the German ecclesiastic dignities has since occasioned something like a renewal of the ancient usage. We have in our day seen a prince of the House of Brunswick (the late Duke of York) at the same time commander-in-chief of the British army and Bishop of Osnabrück. The efforts of the abbots to throw off the authority of their diocesans long disturbed the church, and called forth severe denunciations from several of the early councils. Some abbots, however, obtained special charters, which recognized their independence; a boon which, although acquired at first with the consent of the bishop, was usually defended against his successors with the most jealous punctiliousness. Many of the abbots lived in the enjoyment of great power and state. In ancient times they possessed nearly absolute authority in their monasteries. "Before the time of Charlemagne," says Gibbon, "the abbots indulged themselves in mutilating their monks, or putting out their eyes; a punishment much less cruel than the tremendous *vade in pace* (the subterraneous dungeon or sepulchre), which was afterwards invented." The picture which this writer draws of what he calls "the abject slavery of the monastic discipline" is very striking. "The actions of a monk, his words, and even his thoughts, were

determined by an inflexible rule, or a capricious superior: the slightest offences were corrected by disgrace or confinement, extraordinary fasts, or bloody flagellation; and disobedience, murmur, or delay, were ranked in the catalogue of the most heinous sins." The external pomp and splendour with which an abbot was in many cases surrounded, corresponded to the extensive authority which he enjoyed within his abbey, and throughout his domains. St. Bernard is thought to refer to the celebrated Luger, abbot of St. Denis, in the beginning of the twelfth century, when he speaks, in one of his writings, of having seen an abbot at the head of more than 600 horsemen, who served him as a cortege. "By the pomp which these dignitaries exhibit," adds the saint, "you would take them, not for superiors of monasteries, but for the lords of castles,—not for the directors of consciences, but for the governors of provinces." This illustrates a remark which Gibbon makes in one of his notes:—"I have somewhere heard or read the frank confession of a Benedictine abbot:—'My vow of poverty has given me 100,000 crowns a year, my vow of obedience has raised me to the rank of a sovereign prince.'" Even in the unreformed parts of the Continent, however, and long before the French Revolution, the powers of the heads of monasteries, as well as those of other ecclesiastical persons, had been reduced to comparatively narrow limits; and the power both of abbots and bishops had been subjected in all material points to the civil authority. The former became merely guardians of the rule of their order, and superintendents of the internal discipline which it prescribed. In France this salutary change was greatly facilitated by the concordat made by Francis I. with Pope Leo X. in 1516, which gave to the king the right of nominating the abbots of nearly every monastery in his dominions. The only exceptions were some of the principal and most ancient houses, which retained the privilege of electing their superiors. The title of abbot has also been borne by the civil authorities in some places, especially among the Genoese, one of whose chief magistrates used to be called the Abbot

of the People. Nor must we forget another application of the term which was once famous in our own and other countries. In many of the French towns there used, of old, to be annually elected from among the burgesses, by the magistrates, an Abbé de Liesse (in Latin, Abbas Lætitie), that is, an Abbot of Joy, who acted for the year as a sort of master of the revels, presiding over and directing all their public shows. Among the retainers of some great families in England was an officer of a similar description, styled the Abbot of Misrule; and in Scotland the Abbot of Unreason was, before the Reformation, a personage who acted a principal part in the diversions of the populace, and one of those whom the zeal of the reforming divines was most eager in proscribing.

ABDICATION (from the Latin *abdicatio*), in general is the act of renouncing and giving up an office by the voluntary act of the party who holds it. The term is now generally applied to the giving up of the kingly office; and in some countries a king can abdicate, in the proper sense of that term, whenever he pleases. But the King of England cannot abdicate, except with the consent of the two Houses of Parliament, in any constitutional form; for a proper abdication would be a divesting himself of his regal powers by his own will, and such an abdication is inconsistent with the nature of his kingly office. It is, however, established by a precedent that he does abdicate, or an abdication may be presumed, if he does acts which are inconsistent with and subversive of that system of government of which he forms a part. In Blackstone's 'Commentaries,' vol. i. pp. 210-212, and iv. p. 78, mention is made of the resolution of both Houses, in 1688, that "King James II. having endeavoured to subvert the constitution of the kingdom, by breaking the original contract between king and people; and by the advice of Jesuits and other wicked persons, having violated the fundamental laws, and having withdrawn himself out of the kingdom; has abdicated the government, and that the throne is thereby vacant." Thus it appears that the Houses

of Lords and Commons assumed the doctrine of an original contract between the king and the people as the foundation of their declaration that James II. had abdicated the throne; and Blackstone, in arguing upon this declaration, assumes, what is contrary to the evidence of history, that the powers of the King of England were originally delegated to him by the nation.

It appears, by the parliamentary debates at that period, that in the conference between the two Houses of Parliament, previous to the passing of the statute which settled the crown upon William III., it was disputed whether the word 'abdicated,' or 'deserted,' should be the term used, to denote in the Journals the conduct of James II. in quitting the country. It was then resolved that the word 'abdicate' should be used, as including in it the mal-administration of his government. But in coming to this resolution the Houses gave a new meaning to the word.

Among the Romans the term *Abdicatio* signified generally a rejection or giving up of a thing, and a magistrate was said to abdicate who for any reason gave up his office before the term was expired.

The term Resignation, according to English usage, has a different meaning from abdication; though it is stated that these words are sometimes confounded. [RESIGNATION.]

**ABDUCTION** (from the Latin word *abductio*, which is from the verb *abducere*, to lead or carry off) is an unlawful taking away of the person of another, whether of child, wife, ward, heiress, or women generally.

**ABDUCTION of child.** [KIDNAPPING.]

**ABDUCTION of wife** may be either by open violence, or by fraud and persuasion, though the law in both cases supposes force and constraint. The remedy given to the husband in such a case is an action, by which he may recover, not the possession of his wife, but damages for taking her away; and also, by statute of 3 Edward I. c. 13, the offender shall be imprisoned for two years, and fined at the pleasure of the king. The husband is also entitled to recover damages against such as persuade and entice the wife to

live separate from him without sufficient cause.

**ABDUCTION of ward.** A guardian is entitled to an action if his ward be taken from him, but for the damages recovered in such action he must account to his ward when the ward comes of age. This action is now nearly superseded by a more speedy and summary method of redressing all complaints relative to guardians and wards,—namely, by application to the Court of Chancery.

**ABDUCTION of heiress.** By 9 George IV. c. 31, § 19, when any woman shall have any interest, legal or equitable, present or future, in any estate real or personal, or shall be heiress presumptive, or next of kin to any one having such interest, any person who from motives of lucre shall take or detain her against her will for the purpose of her being married or defiled, and all counsellors, aiders and abettors of such offences are declared guilty of felony, and punishable by transportation for life, or not less than seven years, or imprisonment with or without hard labour. The taking of any unmarried girl under sixteen out of the possession of a parent or guardian is declared a misdemeanor, and is punishable by fine and imprisonment (§ 20). The marriage, when obtained by means of force, may be set aside on that ground. In this case, as in many others, *fraud* is legally considered as equivalent to force; and, consequently, in a case where both the abduction and marriage were voluntary in fact, they were held in law to be forcible, the consent to both having been obtained by fraud. (See the case of the *King v. Edward Gibbon Wakefield*.)

**ABDUCTION of women generally.** The forcible abduction and marriage of women is a felony. Here, and in the case of stealing an heiress, the usual rule that a wife shall not give evidence for or against her husband is departed from, for in such case the woman can with no propriety be reckoned a wife where a main ingredient, her consent, was wanting to the contract of marriage; besides which there is another rule of law, that "a man shall not take advantage of his own wrong," which would obviously be done here, if he who carries off a woman could, by

forcibly marrying her, prevent her from being evidence against him, when she was perhaps the only witness to the fact.

By 5 & 6 Vict. c. 38, § 11, charges of abduction of women and girls cannot be tried by justices at sessions, but must take place in a superior court.

ABEYANCE is a legal term, derived from the French *bayer*, which, says Richelet, means to "look at anything with mouth wide open." Coke (Co. Litt. 342, b.) explains the term thus, "*En abeyance*, that is, in expectation, of the French *bayer* to expect. For when a parson dieth, we say that the freehold is in abeyance, because a successor is in expectation to take it; and here note the necessity of the true interpretation of words. If tenant *pur terme d'autre vie* dieth, the freehold is said to be in abeyance until the occupant entereth. If a man makes a lease for life, the remainder to the right heirs of J. S., the fee-simple is in abeyance until J. S. dieth. And so in the case of the parson, the fee and right is in abeyance, that is in expectation, in remembrance, entitlement or consideration of law, in consideratione sive intelligentia legis; because it is not in any man living; and the right that is in abeyance is said to be *in nubibus*, in the clouds, and therein hath a qualitie of fame whereof the poet speaketh:

'Ingrediturque solo et caput inter nubila condit.'

Such is a specimen of the ridiculous absurdity with which Coke seeks to relieve the dryness of legal learning.

The expression that the freehold or the inheritance of an estate is in abeyance means that there is no person in whom the freehold or the inheritance is then vested, and that the ownership of the freehold or of the inheritance is waiting or expecting for an owner who is to be ascertained. This doctrine of the suspense of the freehold or of the inheritance is repugnant to the general principles of the tenure of land in England. By the old law, it was always necessary that some person should be in existence as the representative of the fee or freehold for the discharge of the feudal duties, and to answer the actions which might be brought for the fief; and thus the maxim

arose that the freehold of lands could never be in abeyance. Still it was admitted that both the inheritance and the freehold might in some cases be in abeyance. Thus, in the case of glebe lands belonging to parsons, and of lands held by bishops and other corporations sole, it is said that the *inheritance* must always be in abeyance, as no one can, under any circumstances, be entitled to more than an estate for life in these lands; and during a vacancy of the church, it is said that the freehold is in abeyance, for there is then no parson to have it, and it is said that the freehold cannot be in the patron, who, though he possesses a right to present to the benefice, has no direct interest in the land annexed to it. This subject is further considered under TENURE.

But whatever may be the true doctrine of abeyance in the case just mentioned, it is certain that such an abeyance cannot be *created* by the voluntary acts of parties. Therefore if a man grant land in such a manner that the immediate *freehold* would, if the deed were allowed to operate, be in abeyance, it is a rule of law that the deed by which such a grant is made, is void; and if the grant be so framed that the *inheritance* would be in abeyance, it is a rule of law that the inheritance shall remain in the person who makes the grant. The object of this rule of law is to prevent the possibility of the freehold subsisting for a time without an owner. Also, "When a remainder of inheritance is limited in contingency by way of use or devise, the inheritance in the mean time, if not otherwise disposed of, remains in the grantor and his heirs, or, in the heirs of the testator, until the contingency happens to take it out of them." (Ferne, *Contingent Remainders*, p. 513, 4th edit.)

Titles of Honour are also sometimes said to be in abeyance, which occurs when the persons next in inheritance to the last possessor are several females or co-parceners. In this case the title is not extinct, but is in abeyance; and may be revived at any time by the king. Several instances of the exercise of this prerogative are on record both in ancient and modern times. (Coke upon Littleton, 165, a.)

Among the Romans an *hereditas*, of which the *heres* was not yet ascertained, was said '*jacere*;' and this is a case which corresponds to the abeyance of the English law. When the *heres* was ascertained, his rights as *heres* were considered to commence from the time of the death of the testator or the intestate. During the interval between the death and the ascertainment of the *heres*, the *hereditas* was sometimes spoken of as a person; and sometimes it was viewed as representing the defunct. These two modes of viewing the *hereditas* in this intermediate time express the same thing, the legal capacity of the defunct. The reason for this fiction was peculiar to the Roman law, and it had no other object than to facilitate certain acquisitions of property by means of slaves who were a part of the *hereditas*. A slave could in many cases acquire for his master; but in the case of an *hereditas jacens*, the slave could only acquire for the benefit of the *hereditas* by virtue of a fiction that he had still an owner of proper legal capacity. The fiction accordingly made the acquisition of the slave valid by reference to the legal capacity of his defunct owner, which was known, and not to the condition of the unascertained *heres*, who might not have the necessary legal capacity. Thus, if a Roman, who had a legal capacity to make a will, died intestate, and one of the intestate's slaves was appointed his *heres* by another person, the slave could take as *heres* for the benefit of the *hereditas* to which he belonged, by virtue of the fiction which gave to this *hereditas* the legal capacity of the defunct intestate. (Savigny, *System des heutigen Römischen Rechts*, ii. 363.)

ABILITY; CAPACITY, LEGAL.

[AGE; WIFE.]

ABJURATION (*of the Realm*) signifies a sworn banishment, or the taking of an oath to renounce and depart from the realm for ever. By the ancient common law of England, if a person guilty of any felony, excepting sacrilege, fled to a parish church or churchyard for sanctuary, he might, within forty days afterwards, go clothed in sackcloth before the coroner, confess the full particulars of his guilt, and take an oath to abjure the king-

dom for ever, and not to return without the king's licence. Upon making his confession and taking this oath, he became attainted of the felony; he had forty days from the day of his appearance before the coroner to prepare for his departure, and the coroner assigned him such port as he chose for his embarkation, to which he was bound to repair immediately with a cross in his hand, and to embark with all convenient speed. If he did not go immediately out of the kingdom, or if he afterwards returned into England without licence, he was condemned to be hanged, unless he happened to be a clerk, in which case he was allowed the benefit of clergy. This practice, which has obvious marks of a religious origin, was, by several regulations in the reign of Henry VIII., in a great measure discontinued, and at length by the statute 21 James I. c. 28, all privilege of sanctuary and abjuration consequent upon it were entirely abolished. In the reign of Queen Elizabeth, however, amongst other severities then enacted against Roman Catholics and Protestant Dissenters convicted of having refused to attend the divine service of the Church of England, they were by statute (35 Eliz. c. 1) required to *abjure the realm* in open court, and if they refused to swear, or returned to England without licence after their departure, they were to be adjudged felons, and to suffer death without benefit of clergy. Thus the punishment of abjuration inflicted by this Act of Parliament was far more severe than abjuration for felony at the common law: in the latter case, the felon had the benefit of clergy; in the former, it was expressly taken away. Protestant Dissenters are expressly exempted from this severe enactment by the Toleration Act; but Popish recusants convict were liable to be called upon to abjure the realm for their recusancy, until a statute, passed in the 31 Geo. III. (1791), relieved them from that and many other penal restrictions upon their taking the oaths of allegiance and abjuration.

ABJURATION (*Oath of*). This is an oath asserting the title of the present royal family to the crown of England. It is imposed by 13 Will. III. c. 6; 1 Geo. I. c. 13; and 6 Geo. III. c. 53. By this

oath the juror recognises the right of the king under the Act of Settlement, engages to support him to the utmost of the juror's power, promises to disclose all traitorous conspiracies against him, and expressly disclaims any right to the crown of England by the descendants of the Pretender. The juror then declares that he rejects the opinion that princes excommunicated by the Pope may be deposed or murdered; that he does not believe that the Pope of Rome or any other foreign prince, prelate, or person has or ought to have jurisdiction directly or indirectly within the realm. The form of oath taken by Roman Catholics who sit in either House of Parliament is given in 10 Geo. IV. c. 7 (the Roman Catholic Relief Act). The first part of the oath is similar in substance to the form required under 6 Geo. III. c. 53. The following part of the oath is new:—"I do hereby disclaim, disavow, and solemnly abjure any intention to subvert the present Church Establishment as settled by law within this realm; and I do solemnly swear that I will never exercise any privilege to which I am or may become entitled to disturb or weaken the Protestant religion or Protestant government in the United Kingdom; and I do solemnly, in the presence of God, profess, testify and declare that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words of this oath, without any evasion, equivocation, or mental reservation whatsoever." Before the passing of this Act (10 Geo. IV. c. 7), the oath and declaration required to be taken and made as qualification for sitting and voting in Parliament were the oaths of allegiance, supremacy, and abjuration, and the declarations commonly called the declarations against transubstantiation, the invocation of saints, and the sacrifice of the mass.

The case of a member of the House of Commons becoming converted to the Roman Catholic faith after he had taken his seat, occurred for the first time since the passing of 10 Geo. IV. c. 7, in the session of 1844, and is thus noticed in the Votes and Proceedings of the House, dated May 13:—"Charles Robert Scott Murray, esquire, member for the county of Buck-

ingham, having embraced the Roman Catholic religion, took and subscribed the oath required to be taken and subscribed by Roman Catholics."

The word *Abjuratio* does not occur in classical Latin writers, and the verb *Abjurare*, which often occurs, signifies to deny a thing falsely upon oath.

**ABORIGINES**, a term by which we denote the primitive inhabitants of a country. Thus, to take one of the most striking instances, when the continent and islands of America were discovered, they were found to be inhabited by various races of people, of whose immigration into those regions we have no historical accounts. All the tribes, then, of North America may, for the present, be considered as aborigines. We can, indeed, since the discovery of America, trace the movements of various tribes from one part of the continent to another; and, in this point of view, when we compare the tribes *one with another*, we cannot call a tribe which has changed its place of abode, aboriginal, with reference to the new country which it has occupied. The North American tribes that have moved from the east side of the Mississippi to the west of that river are not *aborigines* in their new territories. But the *whole mass* of American Indians must, for the present, be considered as *aboriginal* with respect to the rest of the world. The English, French, Germans, and others, who have settled in America, are, of course, not *aborigines* with reference to that continent, but settlers, or colonists.

If there is no reason to suppose that we can discover traces of any people who inhabited England prior to and different from those whom Julius Cæsar found here, then the Britons of Cæsar's time are the aborigines of this island.

The term *aborigines* first occurs in the Greek and Roman writers who treated of the earlier periods of Roman history, and, though interpreted by Dionysius of Halicarnassus (who writes it, in common with other Greek authors, *Ἀβωργίνες*, or *Ἀβωργίνες*, or *Ἀβωργίνοι*) to mean *ancestors*, it is more probable that it corresponds to the Greek word *autochthones*. This latter designation, indeed, expresses the most remote possible origin of a nation, for it



signifies "people coeval with the land which they inhabit." The word *aborigines*, though perhaps not derived, as some suppose, from the Latin words *ab* and *origo*, still has the appearance of being a *general* term analogous to *autochthones*, and not the name of any people really known to history. The *Aborigines* of the ancient legends, interwoven with the history of Rome, were, according to Cato, the inhabitants of part of the country south of the Tiber, called by the Romans Latium, and now the Maremma of the Campagna di Roma. (Niebuhr, *Roman History*.)

The word *aborigines* has of late come into general use to express the natives of various parts of the world in which Europeans have settled; but it seems to be limited or to be nearly limited to such natives as are barbarous, and do not cultivate the ground, and have no settled habitations. Some of the later Roman writers, as Sallust, describe the Italian *aborigines* as a race of savages, not living in a regular society; a description which, as Niebuhr remarks, is probably nothing else than an ancient speculation about the progress of mankind from animal rudeness to civilization. Such a speculation was very much to Sallust's taste, and we find it also in Lucretius and Horace. Probably the modern sense of this word and the sense in which Sallust uses it agree more nearly than appears at first. The *aborigines* of Australasia and Van Diemen's Land (if there are any left in Van Diemen's Land) are so called as being savages, though the name may be applied with equal propriety to cultivators of the ground. Some benevolent people suppose that *aborigines*, who are not cultivators of the ground, may become civilized like Europeans. But it has not yet been proved satisfactorily that this change can be effected in any large numbers; and if it can be effected, it is an essential condition that the *aborigines* must give up their present mode of life and adopt that of the settlers. But such a change is not easy: even in the United States of North America it has been only partially effected. The wide expanse of country between the Mississippi and the Atlantic is now nearly cleared of the *aborigines*, and the white

man, who covets the possession of land, will follow up his victory till he has occupied every portion of the continent which he finds suitable for cultivation. The red man must become a cultivator, or he must retire to places where the white man does not think it worth his while to follow him. The savage *aborigines* do not pass from what we call barbarism to what we call civilization without being subjected to the force of external circumstances, that is, the presence among them of settlers or conquerors. There is no more reason for supposing that hunters will change their mode of life, such as it is, without being compelled, than that agricultural people will change theirs. *Aborigines*, then, as we now understand them, will remain what they are until they are affected by foreign intercourse; and this intercourse will either destroy them in the end, a result which is confirmed by most of our experience, or it will change their habits to those of their conquerors or the settlers among them, and so preserve them, not as a distinct nation, for that is impossible, but by incorporating them among the foreigners. A nation of agriculturists, though conquered, may and does endure, and may preserve its distinctive character; a nation of savages can only endure as such by keeping free from all intercourse with an agricultural and commercial people.

ABORTION. [HOMICIDE.]

ABROGATION. [LAW.]

ABSENTEE. This is a term applied, generally by way of reproach, to that class of capitalists who derive their income from one country, and reside in another country, in which they expend their income. We here propose to state some of the more material points in the controverted question, whether the consumption of absentees is an evil to the particular country from which they derive their revenues. There is a decided tendency in the progress of social intercourse to loosen the ties which formerly bound an individual or a family to one particular spot. From the improvement of roads, and the rapidity and certainty of steam navigation, Dublin is now as near, in point of time, to London, as Bath was half a century ago; and the distance

between England and every part of the Continent is in the same way daily diminishing. The inducements to absenteeism, whether from Ireland to England, or from England to the Continent, are constantly increasing; and it is worth while considering whether the evils of absenteeism are so great as some suppose, or whether, according to a theory that was much in vogue some years ago, absenteeism is an evil at all.

The expenditure of a landed proprietor resident upon his estate calls into action the industry of a number of labourers, domestics, artisans, and tradesmen. If the landlord remove to another part of the same country, the labourers remain; the domestic servants probably remove with him; but the artisans and tradesmen whom he formerly employed lose that profit which they once derived by the exchange of their skill or commodities for a portion of the landlord's capital. It never occurs to those who observe and perhaps deplore these changes, that the landlord ought to be prevented from spending his money in what part of his own country he pleases. They conclude that there is only a fresh distribution of the landlord's revenues, and that new tradesmen and mechanics have obtained the custom which the old ones have lost. But if the same landlord go to reside in a foreign country—if the Englishman go to France or Italy, or the Irishman to England—it is sometimes asserted that the amount of revenue which he spends in the foreign country is so much clear loss to the country from which he derives his property, and so much encouragement withdrawn from its industry; and that he ought, therefore, to be compelled to stay at home, instead of draining his native land for the support of foreign rivals. Some economists maintain that this is a popular delusion, and that, in point of fact, the revenue spent by the landlord in a foreign country has precisely the same effect upon the industry of his own country as if his consumption took place at home, for that, in either case, it is unproductive consumption. We will endeavour to state their arguments as briefly as we can.

We will suppose a landowner to derive

an income of 1000*l.* a year from an estate in one of our agricultural counties. We leave out of the consideration whether he resides or not upon his estate, and endeavours, by his moral influence, to improve the condition of his poorer neighbours, or lets his land to a tenant. The landowner may reside in London, or Brighton, or Cheltenham. With his rents he probably purchases many articles of foreign production, which have been exchanged for the productions of our own country. There are few people now who do not understand that if we did not take from foreigners the goods which they can produce cheaper and better than we can, we should not send to foreigners the goods which we can produce cheaper and better than they can. If we did not take wines from the continental nations, for instance, we should not send to the continental nations our cottons and hardware; and the same principle applies to all the countries of the earth with which we have commercial intercourse. The landlord, therefore, by consuming the foreign wines encourages our own manufactures of cotton and hardware, as much as if, drinking no foreign wine at all, he applied the money so saved to the direct purchases of cotton and hardware at home. But he even bestows a greater encouragement upon native industry, by consuming wine which has been exchanged for cotton and hardware, than if he abstained from drinking the wine; for he uses as much cotton and hardware as he wants, as well as the wine; and by using the wine he enables other people in Europe to use the cotton and hardware, who would otherwise have gone without it. For all that he consumes of foreign produce, some English produce has been sent in exchange. Whatever may be the difference between the government accounts of exports and imports (than which nothing can be more fallacious), there is a real balance between the goods we send away and the goods we receive; and thus the intrinsic value of all foreign trade is this,—that it opens a larger store of commodities to the consumers, whilst it develops a wider field of industry for the producers. There

used to be a notion, which for many years affected our legislation, that unless we sent away to foreigners a great many more goods than we received from them, or, in other words, unless our exports were much greater in value than our imports, the balance of trade was against us. [BALANCE OF TRADE.] This notion was founded upon the belief that if we sent away a greater amount of goods than those we received in exchange, we should be paid the difference in bullion; and that the nation would be rich, not in the proportion in which it was industrious at home, and in which its industry obtained foreign products in exchange for native products, but as it got a surplus of gold, year by year, through its foreign trade. Now, in point of fact, no such surplus ever did accrue, or ever could have accrued; for the commercial transactions between one country and another are in fact a series of exchanges or barter, and gold is only the standard by which those exchanges are regulated. We shall see how these considerations bear upon the relations of the English landlord to his native country when he becomes an absentee.

When the landlord, whose case we have supposed, resided upon his estate, he probably received his rental direct from his tenants. That rental was the landlord's share of as many quarters of corn, as many head of oxen and sheep, as many fleeces of wool, as many fowls, as many pounds of butter, and so forth, as the estate produced. Three or four centuries ago the landlord's share was paid in kind: for the convenience of all parties it is now paid in money, or, in other words, the tenant sells the landlord's share, as well as his own share, and pays over the amount of his share to the landlord, in a money-rent, instead of in produce. When the landlord removes to a distant part of the country, this arrangement of modern times becomes doubly convenient. The rental is collected by a steward, and is remitted, usually through a banker, to the landlord. By this process, the produce of the land may be most advantageously sold; and the landlord receives the amount of his share at his own door, without even

the risk of sending money from one part of the kingdom to another.

If the landlord becomes an absentee, the process of remitting his rental assumes a more complicated shape. We will suppose that he settles in the Netherlands. His means of living there depend upon the punctual transmission of the value of his share of the corn, cattle, and other produce which grow upon his estate in England. To make the remittance in bullion would not only be expensive, but unsafe; and, indeed, remittances in bullion can never be made to any considerable extent (such as the demands of absentees would require) from one country to another; for these large remittances would produce a scarcity of money at home, and then the bullion being raised in value, its remittance would consequently cease. Although the expenses of our armies in the Peninsula, in 1812-13, amounted to nearly 32,000,000*l.*, the remittances in coin were little more than 3,000,000*l.* Nearly all foreign remittances are carried on by bills of exchange. The operation of a bill of exchange, in connection with the absentee landlord, would be this:—He is a consumer now, in great part, of foreign produce; he may require many articles of English produce, through the effect of habit; but whether or no, there must be an export of English goods to some country, to the amount of the foreign goods which he consumes, otherwise his remittances could not be made to him. He draws a bill upon England, which he pays, through a banker, to a merchant at Antwerp. This bill represents his share of the corn and cattle upon his farm; but the merchant at Antwerp, who does not want corn and cattle, transmits it to a merchant at London, in payment for cotton goods and hardware, which he does want. Or there may be another process. The agent, in England, of the absentee landlord, may procure a bill upon the merchant at Antwerp, which he transmits to the English landlord; and the merchant at Antwerp, recognising in that bill the representation of a debt which he has incurred to England, hands over the proceeds to the bearer of the bill. In either case the bill represents the value

of English commodities exported to foreigners. It is alleged that the consumption of an English resident in a foreign state, out of a capital derived from England, produces, in principle, the same indirect effects upon English industry, as his partial or entire consumption of foreign goods in England. His consumption of foreign goods abroad is equivalent to an importation of foreign goods into England; and that consumption, it is said, produces a correspondent exportation of English goods to the foreigner. If England sends out a thousand pounds' worth of her exports in consequence of the absentee's residence abroad, it is maintained that it cannot be said that she gets nothing in return. She would have had to pay a thousand pounds to the landlord wherever he resided; and the only question is, whether she pays the amount less advantageously for the national welfare to the absentee, than to the resident at home. The political economists, whose opinions we have endeavoured to exhibit, maintain that she does not. It is probable that a good deal of the difficulty which this question presents has arisen from the circumstance that the subtraction of a particular amount of expenditure from a particular district is felt in the immediate locality as an evil, while the benefit which still remains to the whole country is not perceived, because it is universally diffused.

But it would be a widely different question if the absentee landlord, who had been accustomed to expend a certain portion of his income in the improvement of his estate in England, were to suspend those improvements, and invest his surplus capital in undertakings in a foreign country. This the political economists, who have been most consistent in their opinions as to the effects of absentee consumption, never maintained: if they had, they would have confounded the great distinction between accumulation and consumption, upon which the very foundations of their science rest. In many cases the smaller consumption of an absentee, in a country where the necessaries of life are cheap, enables him to accumulate with greater ease than he could at home; and this accumulation

is, in nearly every case, invested at home. It is the same thing whether the absentee improves his own estate by the accumulation, or lends the amount of the capital so saved to other encouragers of industry at home. Nor could the political economists ever have intended, in maintaining, as a mere question of wealth, that it was a matter of indifference where an income was spent, to put out of view the moral advantages which arise out of a rational course of individual expenditure.

(M'Culloch's Evidence before the Select Committee on the State of Ireland, 1825, Fourth Report, pp. 813-815; also his Evidence before the Select Committee on the State of the Poor in Ireland, 1830, p. 592, &c.—Leslie Foster's *Essay upon Commercial Exchange*, 1804, quoted in the last-mentioned Report, p. 597; Say, *Cours Complet d'Economie Politique*, tom. v. chap. 6; Chalmers on *Political Economy*, p. 200, 1832; *Quarterly Review*, vol. xxxiii. p. 459, for a hostile examination of Mr. M'Culloch's opinions.)

So far we have given the arguments of those economists who have contended that absenteeism is no injury to the country from which the rent of the absentee is derived. It must be admitted that the evil is not so serious as many people suppose, and if we take everything into the account, it may be that the evil is inconsiderable. So complicated are the relations of modern society, that any restraint upon the mode in which a man spends his income would probably do much more mischief, even to the country from which an absentee derives his income, than the absenteeism itself does, whatever that amount of mischief may be.

Still, as a mere scientific question, the opinion of those who maintain that absenteeism is no loss to the country of the absentee, requires some limitation. It is easy to show that its direct effect is to diminish accumulation in the country of the absentee, and it is not easy to show that this direct effect is counteracted to its full amount in any indirect way.

It cannot be proved, as it has been stated above, that the absentee's consumption of foreign goods abroad is equivalent to an importation of foreign goods into

England, and that such consumption produces a correspondent exportation of English goods to the foreigner. The absentee is enabled to receive his rent abroad because a foreign trade already exists; and it is not necessary, in order that he shall be able to receive his rent in money abroad, that a trade should exist between his native country and the country of his residence. There must be a foreign trade somewhere, in order that he may receive his rent abroad in money, but a man may live in a part of Europe which has no trade with Great Britain, and he will receive his money by an indirect route, and by means of the trade of England with some other foreign country. But it does not follow that the foreign trade of Great Britain is increased by the consumption of an absentee abroad so as to produce an exportation of English goods to the amount of his foreign consumption. And if we admit that the absentee's consumption of foreign goods abroad produces all the effect that has been attributed to it, this will not remove the whole difficulty. Many of the things which he consumes abroad are not the peculiar products of the foreign country which he would or might consume, whether he was in England or a foreign country. He consumes and uses many things abroad which he would consume or use in England, and which must be furnished by the country in which he is residing.

Accumulation, or the increase of wealth in a country, can only arise from savings or from profits. All persons who supply the demands of others obtain a profit by the transaction; at least the obtaining of a profit is the object with which a demand is supplied, and the actual obtaining of a profit is the condition without which a demand cannot be permanently supplied. All persons who have an income to spend may in one sense consume it unproductively, as it is termed, that is, the income may be spent merely for the purpose of enjoyment, and not for the purpose of profitable production. But no income which is received in money can be spent without indirectly causing profitable production, for every person who supplies the wants of the spender of the income receives

a portion of the spender's money, part of which portion is the profit of the supplier. If this income is spent in France or in Belgium, persons in France or in Belgium derive a profit from supplying the absentee, and this profit enables them to accumulate. What is thus spent in France or in Belgium produces a profit to a Frenchman or a Belgian, and enables him to accumulate, and this profit is something taken from the profits of those who would supply the demands of the consumer in England. If all the persons who come to settle in London, and require commodious houses, servants, fruits, vegetables, and so forth, were to settle at Brussels, the houses which are now built in London, and the grounds which are employed as kitchen-gardens round the metropolis, would not exist, and the profit derived from this employment of capital would not exist. It would be transferred to Brussels and to Belgian capitalists. This would be the immediate effect of the wealthy residents in London removing to Brussels. The removal of these residents to Brussels would be the withdrawal of one of the means of profitably employing capital, and would so far be a loss to the national wealth. Nor can it be shown that the capital which is now employed in and about London in building houses and cultivating garden-ground could be employed with equal profit in some other way; for to assert this would be equivalent to asserting that it is always possible to employ capital under all circumstances in a manner equally profitable. It may be rejoined, that if the wealthy residents of London removed to Brussels, English capital would be required in order to accommodate them with houses, and to provide other ordinary necessities. This may be admitted, and yet it does not remove all the difficulty, for if the residents were to remove to various towns of Italy, the employment of English capital would not be required to the same degree as if they were all to remove to Brussels.

There are also numerous small sources of profit arising from the supply of the ordinary wants of a man and his family, which accrue to the people of the place

in which a man fixes his residence: these are the ordinary retail profits of trade. This is obvious in the case of a number of families quitting a provincial town to reside in London: the provincial town decays, and that source of profit which is derived from supplying the wants of the families is transferred to the tradesmen of their new place of residence. This, which is true as to one place in England compared with another, is equally true as to England compared with Belgium or France. If we take into account merely the amount of wages which a large body of absentees must pay to their domestic servants, this will form a very considerable sum. The savings of domestic servants in England from their wages are invested in various ways; and such savings are no small part of the whole amount of the deposits in Savings' Banks. It will hardly be maintained that all those who would be employed as domestic servants in London, if the absentees in France were to come to live in London, are employed with equal profit to themselves while the absentees are abroad. London is supplied with domestic servants from the country, many of whom would be living at home and doing nothing, if there were no demand for their services in London; and everything that diminishes such demand, diminishes the savings of a class whose accumulated earnings form a part of the productive capital of Great Britain.

Those, then, who maintain that absenteeism has no effect on the wealth of the country from which the absentee derives his income, maintain a proposition which is untrue. Those who maintain that the amount which a man spends in a foreign country is so much clear loss to the country of the absentee, are also mistaken. There are many ways in which the loss is indirectly made up; but whatever may be its amount, it would be unwise to check absenteeism by any direct means, and it is not easy to see how it can be checked indirectly in any way that will produce good.

Since writing this we have seen 'Five Lectures on Political Economy,' delivered before the University of Dublin, in Michaelmas Term, 1843, by J. A. Lawson,

L.L.B., in which the subject of absenteeism is discussed, though from a somewhat different point of view. Mr. Lawson does not agree with those economists who think that a country can sustain no injury from the residence abroad of landlords and other proprietors of revenue. He is of opinion that, so far at least as Ireland is concerned, absenteeism is an economical evil. His views on the effects of absenteeism are contained in Lecture V., pp. 122-131.

ACADEMY. [UNIVERSITY.]

ACADEMIES. [SOCIETIES.]

ACCEPTANCE. [BILL OF EXCHANGE.]

ACCEPTOR. [BILL OF EXCHANGE.]

ACCOUNTANT-GENERAL, an officer of the Court of Chancery, first appointed under an act (12 Geo. I. c. 32) "for securing the moneys and effects of the suitors." The act recites that ill consequence and great prejudice already had and might again ensue to the suitors by having their moneys left in the sole power of the Masters of the Court. The bonds, tallies, orders and effects of suitors were, it appears, until the passing of this act, locked up in several chests in the Bank of England, under the direction of the Masters and two of the Six Clerks. The act confirms a previous order of the Court of Chancery for adopting a different system; and § 3 enacts that "to the end the account between the suitors of the High Court of Chancery and the Bank of England may be the more regularly and plainly kept, and the state of such account may be at all times seen and known," there shall be "one person appointed by the High Court of Chancery to act, perform and do all such matters and things relating to the delivering of the suitors' money and effects into the Bank, and taking them out of the Bank, &c., which was formerly done by the Masters and Usher of the Court." The Accountant-General is "not to meddle with the suitors' money, but only to keep an account with the Bank." No one has yet been appointed to the office without first becoming a Master in Chancery. The present Accountant-General, who was appointed in April, 1839, is the thirteenth who has filled the situation since

the first appointment in 1726. The salary is 900*l.* a year, and 600*l.* a year as Master's salary, with some other emoluments.

The total sum standing in the name of the Accountant-General on the 30th of April, 1841, was 40,957,839*l.*, of which above 39,000,000*l.* was invested in stock, and 1,759,629*l.* was in cash. (*App. to Report on Courts of Law and Equity*, No. 476, Sess. 1842.) The act 5 Vict. c. 5, § 63, directs the Accountant-General to cause to be laid before Parliament every year an account showing the state of the Sutors' Fund and the Sutors' Fee Fund, which stand in his name. The Sutors' Fund consists of money and stock unclaimed, but which are open to claim at any time. On the 1st of October, 1842, this fund amounted to 26,299*l.* cash, and 2,869,213*l.* stock. The Fee Fund accrues from fees formerly payable to the different officers of the court for their own advantage. These fees amounted to 62,808*l.* in the year ending Nov. 1842. The salaries of the lord chancellor, the vice-chancellors, and other officers of the Court of Chancery are paid out of these two funds.

Before the passing of the act 5 Vict. c. 5, for suppressing the equity jurisdiction of the Court of Exchequer, there was an Accountant-General of that court; and in April, 1841, a sum of 2,730,862*l.* was standing in his name in the Bank of England. The account is now transferred to the Accountant-General of the Court of Chancery. The duties of the Accountant-General and Masters of the Exchequer are now performed by the Queen's Remembrancer.

There is an Accountant-General of the Irish Court of Chancery.

#### ACCUMULATION. [CAPITAL.]

**ACCUMULATION.** An act of Parliament (39 & 40 Geo. III. c. 98), after declaring in the preamble that "it is expedient that all dispositions of real or personal estates, whereby the profits and produce thereof are directed to be accumulated or the enjoyment thereof postponed, should be made subject to the restrictions hereinafter contained," proceeds to enact to the following effect. No person can settle or dispose of property by deed, will, or otherwise, so as to

accumulate the income thereof, either wholly or partially, "for any longer term than the life or lives of any such grantor or grantors, settlor or settlors, or the term of twenty-one years from the death of any such grantor, settlor, deviser, or testator, or during the minority or respective minorities of any person or persons who shall be living or in *ventre sa mere* at the time of the death of such grantor, deviser, or testator, or during the minority or respective minorities only of any person or persons who, under the uses or trusts of the deed, surrender, will, or other assurances directing such accumulations, would for the time being, if of full age, be entitled to the rents, issues, and profits, or the interest, dividends, and annual produce so directed to be accumulated. And in every case where accumulation shall be directed otherwise than as aforesaid, such direction shall be null and void, and the rents, issues, profits, and produce of such property so directed to be accumulated shall, so long as the same shall be directed to be accumulated contrary to the provisions of this act, go to and be received by such person or persons as would have been entitled thereto, if such accumulation had not been directed." Sect. 2 provides, "that nothing in this act contained shall extend to any provision for payment of debts of any grantor, settlor, or deviser, or other person or persons, or to any provision for raising portions for any child or children of any person taking any interest under any such conveyance, settlement, or devise, or to any direction touching the produce of timber or wood upon any lands or tenements; but that all such provisions shall be made and given as if this act had not passed." Sect. 3 provides that the act shall not extend to dispositions of heritable property in Scotland.

This act was passed in consequence of the will of Peter Thellusson, a Genevese by birth, but settled in London, who died in 1797, leaving a landed estate worth about 4000*l.* a year, and personal property to the amount of 600,000*l.* He devised and bequeathed this large property to trustees upon trust to accumulate the annual proceeds of his property and

invest them in the purchase of lands, during the lives of his sons, grandsons, and the issue of sons and grandsons, either living or in the womb (in ventre sa mere), at the time of his death, and the lives of the survivors and the survivor of them; and after this period to be conveyed to the lineal descendants of his sons in tail male. According to the provisions of this will, the proceeds of the property were not to be enjoyed, but to be accumulated and laid out in land during the lives of all his sons and grandsons, and the issue of sons or grandsons living, or unborn, at his death, provided such issue was then in the womb. After long litigation, it was finally decided by the House of Lords that the trusts for accumulation were legal (*Thellusson v. Woodford*, 11 Ves. 112); but the act which was passed shortly after has prevented such accumulation for a longer period than during the minority of persons living or in ventre sa mere at the time of the death of the person who so disposes of his property. The act, as it will be observed, mentions various periods, any one of which may be selected by the person who directs the accumulation of his property. There were nine lives in being at the time of Thellusson's death, and the enjoyment of the property was consequently deferred till they had all died.

The general rule of law in this country is, that a man may dispose of his property as he pleases; he may give it to whom he likes to be enjoyed; or he may give it to trustees to apply to such purposes as he pleases. But various restraints have been imposed by statutes on this general power, and the restraint upon accumulation is one of them. The Statute of Mortmain, as it is commonly called [MORTMAIN], is another instance in which the legislature has interfered with a man's general power of disposing of his property. In the case of accumulation, which a man directs to be made after his death, the limits of time now allowed seem amply sufficient for any reasonable purpose. We may conceive various good reasons against allowing a man an unlimited power of directing the accumulation of property after his death; and it is not easy to see that any mischief

is likely to arise from limiting this power, as is done by this act. Another instance of this legal limitation of a man's disposition of his property is noticed under PERPETUITY.

#### ACHÆAN CONFEDERATION.—

The Achæans, who formed that federal union which is commonly called the Achæan League, inhabited the tract which lies along the southern coast of the Corinthian gulf (Gulf of Lepanto). They formed twelve small independent states. The history of the Achæans is an inconsiderable part of the general history of Greece till about B.C. 251. During the invasion of Greece by the Persians, they took no share in the battles of Marathon, Salamis, and Platea; nor, during the long war of twenty-seven years, did they take anything more than a kind of forced part in this protracted struggle between Athens and Sparta. At the commencement of this war (B.C. 431), they were, with the exception of Pellene, neutral; but afterwards favoured the Lacedæmonian interest, in compliance with the general feeling in the peninsula. The cause of their taking no part in the general affairs of Greece may probably have been the want of union among the twelve little states; for though they acknowledged a common origin, and had a kind of connexion, they seem not to have had any complete federal system. Yet they probably attained, at an early period, a considerable degree of prosperity and internal good policy, for the Achæans founded several flourishing colonies in Southern Italy; and the political institutions were considered preferable to those of most states, and were often imitated as a model.

During the struggles of the Southern Greeks against the successors of Alexander, the Achæans wished to remain neutral; but they ultimately became the prey of the Macedonians. Some cities were compelled to receive the garrisons of Demetrius and Cassander; and afterwards those of Antigonos Gonatas, or to submit to tyrants. There would be little in the history of the Achæan states to attract attention, were it not for the more complete federal union which arose out of these discordant elements.

Four of the western states of Achæa,



Dyme, Patræ, Tritæa, and Pharæ (Polybius, ii. 41), seeing the difficulties in which Antigonos Gonatas, King of Macedonia, was involved, formed a union for mutual protection, B.C. 281. Five years afterwards Ægium ejected its garrison, and Bura killed its tyrant, which examples moved Iocæ, who was then tyrant of the neighbouring town of Ceryneia, to surrender his authority, and save his life. These three towns joined the new league. In B.C. 251, Aratus having delivered Sicyon, which was not an Achæan town, brought it over to the confederacy, of which he was elected general in B.C. 245. In 243, having driven the Macedonian garrison out of the stronghold of Corinth, which is the key of Southern Greece, this town also joined the league. Megaris, Epidaurus, and Træzen, followed soon after. During the long career of Aratus other Peloponnesian states were included in the union; and in fact Aratus is called by Polybius the founder of the confederation. In the year B.C. 208, five years after the death of Aratus, Philopœmen was elected general of the confederacy, to which he gave a new life by his activity and wisdom. As the Romans had now humbled Philip V. of Macedonia (B.C. 197), and reduced him to the rank of a dependent king, it was their policy to weaken the power of the confederation; and this was easily effected by the Roman and anti-Roman parties, which had been for some time growing up in the Greek cities. In 191, however, Sparta became a member of the Achæan league, and the design of its leaders was to include all the Peloponnesus within its limits. After the death of Philopœmen (B.C. 183) the Roman party grew still stronger under the influence of Callicrates, and the league remained, in appearance at least, on the side of the Romans in their final struggle with Perseus, king of Macedonia, which ended in the defeat and death of the king (B.C. 168). The influence of Callicrates was now almost supreme, and, so far from opposing, he urged the Romans to demand 1000 of the noblest Achæans to be sent to Rome to answer for their conduct in the late war. Callicrates and his party had named more than 1000, of whose guilt, however, no proof was adduced; his only

object was to humble the party of his opponent Lycortas. Among the accused who were sent to Rome, and there detained for seventeen years, was the historian Polybius, the son of Lycortas, and the strongest support of his father's party.

The last war of the league was with Sparta, which was brought about (B.C. 150) through the influence of Critolaus, one of those who had been detained at Rome. This, which the Romans considered as a kind of attack on themselves, joined to the contumacious treatment of the Roman commissioners at Corinth, which will be presently mentioned, induced the Republic to send L. Mummius to chastise the Achæans; and a fitter man for the purpose could not have been found. The treatment of the Roman commissioners did not tend to soften the ferocity of their barbarian opponent. The Achæan general Diæus met Mummius on the isthmus of Corinth, and fell an easy prey to the Roman general, who, after the battle, burned Corinth to the ground (B.C. 146). Mummius and ten other senators then changed Greece into the Roman province of Achæa, leaving, however, to certain cities, such as Athens, Delphi, and others, the rank of free towns. Corinth afterwards received a Roman colony.

To those who study the history of civil polity, it is a matter of some interest to trace the formation of federative systems, or those by which a number of states unite for certain general purposes, while each maintains all its sovereignty except that portion which is surrendered to the sovereignty of the united states. The object of such associations is twofold—to secure peace and a ready intercourse between all the states, and all the members of them; and secondly, to facilitate all transactions with foreign states, by means of the power given to the united body. Defence against foreign aggression is one of the main objects of such a union; while foreign conquest is, strictly speaking, incompatible with it.

The history of the Grecian states presents us with several examples of federal unions, but the Achæan confederation is better known than any other, though our information about its constitution is very defective.

Each state had an equal political rank, retained its internal regulations, and its coins, weights, and measures, though the general government also had its coins, weights, and measures, which were uniform. The ordinary general assemblies were held twice a year at Ægium (afterwards at Corinth), and they deliberated for three days. Extraordinary assemblies might meet at other places, as, for instance, at Sicyon. The general assemblies decided upon all matters which affected the general interest, on war and peace, and made all such regulations as were required for the preservation of the union. At the Spring meeting, about the time of the vernal equinox, the public functionaries were chosen; the *strategos*, or general of the confederation, was there chosen, with the *hipparchus*, or master of the horse, who held the next rank, and ten functionaries called *demiurgi*: there was also a chief priest chosen to superintend the religious affairs of the confederation. This was the time of election, during the life of Aratus at least. In the earlier times of the league they had two *strategi* and a secretary, as the Romans had two consuls; but, in B.C. 256, after twenty-five years' experience, it was found that one head was better than two. The *strategos* was elected for a single year, and appears not to have been re-eligible till he had been one year out of office. But Aratus filled the office of *strategos* seventeen times in twenty-nine years, and Philopœmen was elected eight times in twenty-four years; Marcus of Ceryneia was the first sole *strategos*. If the *strategos* died in office, his predecessor assumed the functions till the legal meeting of the congress. The functions of the ten *demiurgi* are not clearly ascertained; they probably possessed the right to summon and preside in the ordinary meetings; and certainly they must have prepared the business which was to be so summarily despatched in three days. It seems that they had the power, within some limits, of referring matters to the public body or not, according to a majority of votes in their own body: they were, in fact, a committee, having a kind of initiatory (Liv. xxxii. 22). They probably also formed a kind of adminis-

trative body for the direction of affairs between the times of the public meetings. It may be asked how was the general council composed, particularly after the league comprised within itself so many states? Did the states send deputies? Had they, in fact, a representative government? It is difficult to answer this question, though we are inclined to think there was no strict system of representation. The short time for discussion, the two yearly meetings, the general character of Greek democracy, as well as most passages in which the congress is spoken of, lead us to infer that this deliberative body consisted of every qualified citizen of the confederate states who chose to attend. It appears that all the citizens of the several states, who were thirty years of age, and rich enough not to carry on any handicraft in order to get a living, might attend the yearly meetings, speak and vote. That this, however, could only be the case with the wealthier class, and that the poor could not attend to such business so far from home, must be self-evident. It is also certain that, on extraordinary occasions, a much larger number of men assembled than was usual when things were going in a more regular course. We read of one instance when the Roman commissioners were kicked out of the congress, then sitting at Corinth, with scorn (B.C. 147); and Polybius adds, by way of explanation, "for there was assembled a number of the working class, and of those who followed mechanical occupations, greater than on any former occasion." As Corinth, however, was one of the greatest manufacturing towns of Greece, and the working class occupied a higher station there than those in most places, it is possible that the regular meeting was disturbed by a body of intruders, as we sometimes have seen at our own elections. Another passage of Polybius tells us that Eumenes offered the congress, then sitting at Megalopolis, a large sum of money, that they might, with the interest of it, pay the expenses of those who attended the congress: this would perhaps imply that the number was in some way limited. The offer of Eumenes was rejected.

Some writers have attempted to show

that the demiurgi, or senate, as they have been called, was composed of representatives, one of whom was sent by each of the twelve states; and the number of twelve is made up by including among the senate the strategos, or general, and the secretary. But this conjecture is open to many objections, and supported by feeble evidence and little probability (art. *Achæischer Bund*, in Rotteck and Welcker, *Staats-Lexicon*). But though we are so imperfectly acquainted with the federal constitution of the Achæans, and unable to reconstruct it completely from the scanty fragments which remain, we may safely conclude that it was no inefficient union which called forth from Polybius the following commendation: "Their union is so entire and perfect, that they are not only joined together in bonds of friendship and alliance, but even make use of the same laws, the same weights, coins, and measures, the same magistrates, counsellors, and judges: so that the inhabitants of this whole tract of Greece seem in all respects to form but one single city, except only that they are not enclosed within the circuit of the same walls. In every other point, both through the whole republic, and in every separate state, we find the most exact resemblance and conformity" (Polybius, ii. 37, Hampton's translation). It might be inferred from the first part of this passage that the union was effected by the formation of one state out of many; but this inference is obviated by the concluding sentence which contrasts the whole republic with the several states: and indeed the history of the league shows that it was a federal union of independent states.

The chief authority for the history of the Achæan league is Polybius, book ii., &c.; the particular authorities are referred to in the article in Rotteck and Welcker, *Staats-Lexicon*, in Hermann, *Lehrbuch der Griechischen Staatsalterthümer*, and other modern works.

ACT. This word is a form of the Latin *actum*, from the verb *agere*, which is used generally to express the doing of any act. The Latin word *Actio*, from which our word *Action* is derived, had, among other significations, various legal

meanings. Of these meanings one of the most common was the proceeding by which a man pursued a claim in a court of justice, who was accordingly in such case called the Actor. In this sense we have in our language the expression *Action at law*. The word *Act*, a thing done, is sometimes used to express an act or proceeding of a public nature, of which sense the most signal instance among us is the term *Act of Parliament*, which means an act in which the three component parts of the sovereign power in this country, King, Lords, and Commons, unite, in other words, a *Law* properly so called. The word *Act* is also sometimes applied to denote the record of the Act; and by the expression *Act of Parliament* is now generally understood the record of an Act of the Parliament, or the written record of a Law. In the French language also, the word *acte* denotes a written record of a legal act, the original document, which is either private, *acte sous seing privé*, which requires the acknowledgment of the parties in order to be complete evidence, or a public authenticated act, *acte authentique*, which without such acknowledgment is considered genuine and true. This meaning of the word *Act* or *Acts* is derived from the Romans, among whom *Acta* signified the records of proceedings, and especially public registers and protocols in which the acts and decrees of the public bodies or functionaries were entered, as *Acta Principum*, *Senatus*, *Magistratum*. The *Acta Publica*, or *Diurna* or *Acta Urbis*, was a kind of Roman newspaper, or a species of public journal for all Rome, as opposed to the private journal (*diurna*) which, according to the old Roman love of order, each family had to keep. Augustus had one kept in his house, in which were entered the employments and occupations of the younger members of his family. Julius Cæsar established the practice of drawing up and publishing the *Acta* both of the senate and the people. (Suetonius, *Julius Cæsar*, 20.) Augustus subsequently forbade the publication, but not the drawing up of the *Acta*, and the practice of keeping such records continued, in some shape or other, even to the time

of the Emperor Julian. Only a few fragments of them are extant. They are not unfrequently referred to as authorities by the Roman writers. These Acta were journals of the proceedings of the bodies to which they belonged, and of the chief events that took place in Rome. When Suetonius says (*Augustus*, 36) that Augustus forbade the publication of the Acta of the Senate, it must not be supposed, with some critics, that the *Senatus Consulta* are included in the Acta.

Under the Germanic Empire the term *Acta Publica* denoted the official transactions of the empire, decrees and the reports of the same, which were first collected under this title by Caspar Loe-dorpius, Frankfort, 1629, and his continuators.

The word Acta has been used in an analogous way in other instances in modern times. The *Acta Sanctorum* denote generally all the old stories of the martyrs of the church; and specially, that large work, begun in 1643, by the Jesuit Bolland, and continued by his successors to 1794, in fifty-three folio volumes, which contains such accounts. The *Acta Eruditorum Lipsiensia* was the title of the first learned and critical review that was published in Germany, after the model of the French *Journal des Savans*, and the Roman *Giornale de' Letterati*. It was established in 1680, by Otto Mencken, a professor of Leipzig, and written in Latin. Other journals of a like kind also adopted the name of Acta. The name of Transactions is now given in England to the Acts of most learned and scientific bodies: the Acts of the Courts of Justice, so far as they are made public, are called Reports, while the proceedings of the courts as registered are called Records. (*Rotteck and Welcker, Staats-Lexicon*, art. by W.)

ACT OF PARLIAMENT. [STATUTE.]

ACTION. [Act.]

ACTUARY, a word which, properly speaking, might mean any registrar of a public body, but which is generally used to signify the manager of a joint-stock company under a board of directors, particularly of an insurance company; whence it has come to stand generally

for a person skilled in the doctrine of life annuities and insurances, and who is in the habit of giving opinions upon cases of annuities, reversions, &c. Most of those called actuaries combine both the public and private part of the character.

An actuary combines with the duties of a secretary those of a scientific adviser to the board which gives him his office, in all matters involving calculation, on which it may be supposed that the members of the board are not generally competent to form opinions themselves.

The name has a legal character from its being recognised in the statute 59 Geo. III. c. 128 (or the Friendly Societies' Act of 1819), which enacts that no justice of the peace shall allow of any tables, &c. to be adopted in any Friendly Society, unless the same shall have been approved by "two persons, at the least, known to be professional actuaries, or persons skilled in calculation"—a definition much too vague to be any sufficient guide. The Committee on Friendly Societies of 1825 reported that "petty schoolmasters or accountants, whose opinion upon the probability of sickness and the duration of life is not to be depended upon," had been consulted under this title, and recommended that the actuary of the National Debt Office should be the only recognised authority for the purposes above mentioned; in which recommendation the Committee of 1827 joined. In the 10 Geo. IV. c. 56, however, no alteration was made in the law on this point. By the Act of 1819, no Friendly Society can be dissolved, or any division of money made otherwise than in the ordinary course, without the certificate of two actuaries, that the interests of all the members have been consulted in the proposed dissolution or payment. The 4 & 5 Wm. IV. c. 40, which amends the above Act, provides that no distribution of the funds of any Friendly Society shall take place without a certificate from the actuary of one of the Life Assurance Offices in London appointed by the Board.

The registrar of the Lower House of Convocation is called the actuary. Bishop Gibson says that he is an officer of the archbishop, the president of the convo-

cation, and cites as follows, from the fees established by Archbishop Whitgift (1583-1603) for the vicar-general's office:—"Feoda Actuaria Domus inferioris Convocationis solvenda." (Gibson's *Synodus Anglicana*, 1702.)

The word Actuary is from the Roman "actuarius," which was used in various senses; but its earlier and more common meaning was "short-hand writer." (Suetonius, *Julius Caesar*, 55.) The actuarii militiæ, under the later empire, were persons who kept the army accounts, and had the distribution of the soldiers' rations. (Faccioliati, *Lex. art. Actuarius*.)

In Germany an Actuary (Actuar) is that public officer who is attached to a public functionary, and, in a narrower sense, to a judicial functionary, and is qualified and sworn to note down official proceedings, and to draw up registrations and protocols, and to collect and keep the records of official acts. Acts which are approved in legal form, that is to say, after being first read over, and when the law requires it, as the Prussian law does, are signed by the parties, and are drawn up, collected, and kept by the actuary, and also the copies which are compared by him and certified as true, have public credit, or are taken as complete evidence. Both such acts and their contents are considered as genuine and true until they are proved to be false, so far as the actuary, pursuant to his authority, intends to be security for their genuineness and truth, according to the nature of the case. For example, the actuary intends that a deposition taken down in writing by him, or a memorial accepted and kept by him, is truly and completely the deposition or memorial of the party. Their truth in other respects he does not vouch for. According to the various functionaries or offices to which they are attached, actuaries have various names. When attached to ecclesiastical courts, and frequently when attached to the ordinary courts of justice, they are called Protonotarii (prothonotaries); to the higher provincial colleges, Secretaries; to public functionaries, official actuaries or official clerks (Amstactuarien, Amtschreiber). The secondary actuaries, who are subor-

dinate to the first actuary, are often called registrars or judicial notaries. Every actuary must be an independent functionary, sufficiently qualified for his difficult office, and must have undergone an examination and be bound by oath, and as such he is responsible for the accuracy and sufficient completeness of his notes and acts. As a judicial person he can be objected to as an actuary on the ground of incapacity or of partiality, especially on the ground of near relationship to the judge. According to the general rule of law, it is necessary to the validity of a judicial protocol that both the judge should be present and a duly qualified actuary. The judge and the actuary mutually control one another. The actuary, in order that he may maintain his independence and be really responsible, is not bound to follow the dictation of the judge, except when the judge is merely uttering his own words, or putting his own questions, or giving his own proper orders. It would be an impediment to the careful consideration required of a judge, and to the independent action and mutual control exercised by the judge and actuary over each other, if the judge himself should have to perform the part of actuary; and the independent, careful, and exact discharge of the actuary's duty would be impeded, if he did not draw up the protocol as far as possible in the words of the party, and according to his own understanding of them, subject indeed to the control of the judge, and upon his own responsibility. When these forms are not duly observed, it is a sufficient ground for annulling the process and the protocol. (*Staats-Lexicon*, Rotteck and Welcker, art. by W.)

ADJUDICATION, in the law of debtor and creditor in Scotland, is a process for attaching heritable or real property. It is applicable not merely to land and its accessories, but to all rights "bearing a tract of future time," as annuities, pensions, lands, &c.; and has in general been extended to all such property capable of being applied to the liquidation of debts, as is not attachable by the simpler process of arrestment. The origin of this process of adjudication is to be

found in a very ancient practice called Apprising, by which the debtor who refused to satisfy his creditor, either with money or land, might be compelled to part with so much of the land as the award of a jury found commensurate with the debt. This form was the object of legislation so early as the year 1469, when provision was made for compelling feudal superiors to give the proper investiture to those who acquired lands by such a title. The debtor who is compelled to part with his lands under the old apprising might redeem them within seven years, but it is said that this privilege was often defeated by dexterous expedients, and that the system was a means of judicial oppression, the genuine creditor being often defeated by the collusive proceedings of the debtor's friends; and on the other hand a creditor to a mere nominal amount was often enabled to carry off a large estate. The system was amended by the Act 1672, c. 19. According to modern practice, there are two alternatives laid before the debtor in the process—that the debtor is to make over to the creditor land to the value of his debt and one-fifth more, redeemable within five years; or that the property in general against which the process is directed shall be adjudged to the creditor, liable to be redeemed within ten years, on payment of the debt, interest, &c. The latter is the alternative universally adopted. The lands do not pass into the absolute property of the adjudger at the end of the ten years without judicial intervention, in “an action of declarator of expiry of the legal,” in which the debtor may call on the creditor to account for his transactions, and may redeem the property on paying any balance that may be still due.

There are arrangements for preserving equality among adjudgers, and preventing the more active creditors from carrying off all the available estate. Taking the point of time when the first process has been made effectual by certain proceedings for the completion of the adjudger's title, all others in which the decree is either prior to that event or within a year and a day after it, rank with it and with each other, and they are all

preferable to posterior adjudications. (Acts 1661, c. 62; 1672, c. 19; 54 Geo. III. c. 137, §§ 9—11.) When there are so many adjudications in process against an estate that it may be considered as bankrupt, while the debtor does not come within the class of persons liable to mercantile bankruptcy, it is usual to sweep all the operations into one process called a “Judicial Sale and Ranking.” A factor or assignee is appointed, under judicial inspection, and, to a certain extent, but very imperfectly, the property is realized and distributed among the creditors after the manner of a bankrupt estate. (Acts 1681, c. 17; 1695, c. 24; 54 Geo. III. c. 137, §§ 6, 7; Act. Sed. 22nd Nov. 1711; 17th Jan. 1756; 11th July, 1794.) Where sequestration has been awarded against a person liable to mercantile bankruptcy, the award involves an adjudication of the bankrupt's adjudgeable property from the date of the first deliverance. (2 & 3 Vict. c. 41, § 82.)

The form of an adjudication has long been in use for the completion of defective titles to landed property, and when so employed it is called “Adjudication in implement.”

ADJUSTMENT, in marine insurance, is the settling and ascertaining the exact amount of indemnity which the party insured is entitled to receive under the policy, after all proper allowances and deductions have been made; and fixing the proportion of that indemnity which each underwriter is liable to bear. The contract of insurance is an agreement to indemnify the insured against such losses as he may sustain by the occurrence of any of the events which are expressly, or by implication of law, contained in the policy. Thus, when a ship is lost, or any of those contingencies arise against which the insurance provides, the owner of the ship or of the goods insured, as the case may be, or an authorized agent, reports the circumstance to the insurers or underwriters. In London, this notice is given by an insertion in a book kept at Lloyd's Coffee-House in the subscription-rooms, where the greater part of marine insurances are effected.

Before any adjustment is made, the underwriters require to be informed of all

particulars, that they may be satisfied the loss has occurred through circumstances against which the insurance was effected. In ordinary cases the task of ascertaining these facts, and of examining the correctness of the demand made by the assured, rests with the underwriter who has first subscribed the policy. In complicated cases of partial or average losses, the papers are usually referred to some disinterested party, whose business it is to undertake such references, to calculate and adjust the per centage rate of loss. Where the ship is wholly lost, of course little difficulty occurs in this part of the inquiry; but in cases of partial losses, where the insured has not exercised his right of abandonment [ABANDONMENT], very minute and careful examination often becomes necessary. The quantity of damage being ascertained, the amount which each underwriter has made himself liable to by subscribing the policy is settled; and this being done, it is usual for one of the underwriters, or their agent, to indorse on the policy, "adjusted a partial loss on this policy of so much per cent." To this indorsement the signature of each underwriter must be affixed, and this process is called the adjustment of the loss.

After an adjustment has been made, it is not usual in mercantile practice for the underwriter to require any further proof, but at once to pay the loss; and it has been said that the reason for which adjustments have been introduced into the business of maritime insurance is, that upon the underwriter signing an adjustment, and thereby declaring his liability, and admitting that the whole transaction is adjusted, time should be given him to pay the money. As a question of law, however, it is undecided how far the adjustment is conclusive and binding upon the underwriters; the better opinion appears to be that the adjustment is merely presumptive evidence against an insurer, and has only the effect of transferring the burden of proof from the assured to the underwriters; that is, where an adjustment has taken place, and the liability to pay the loss is disputed, the adjustment alone, without further proof, will be sufficient to entitle the insured to recover in an action on the policy, unless the under-

writer shows facts which may have the effect of relieving him from liability. (Selwyn's *Nisi Prius*, title "Insurance;" Park, on the *Law of Marine Insurance*, and a note to Campbell's *Nisi Prius Reports*, vol. i. p. 276.)

**ADJUTANT** (from the Latin *adjutor*, an assistant) is a military officer, attached to every battalion of a regiment. The office does not confer a separate rank, but is usually given to one of the subaltern officers. The duties of an adjutant are to superintend (under the major of the regiment, and the adjutant-general of the army) all matters relating to the ordinary routine of discipline in the regiment; to receive and promulgate to the battalion all general, garrison, and regimental orders, signing them in the orderly-book on the part of the commanding-officer; to select detachments from the different companies when ordered; to regulate the placing of guards, distribution of ammunition, &c.

**ADJUTANT-GENERAL**, a staff-officer, one of those next in rank to the commander-in-chief. He is to the army what the adjutant is to a regiment; he superintends the details of all the dispositions ordered by the commander-in-chief, communicates general orders to the different brigades, and receives and registers the reports of the state of each, as to numbers, discipline, equipments, &c. Though in a large army the adjutant-general is usually a general officer, yet this rank is not necessary; and in smaller detachments acting independently the duties are frequently intrusted to an officer of lower rank.

**ADMINISTRATION** and **ADMINISTRATOR**. An administrator is a person appointed by the ordinary or bishop of the diocese to make administration of or to distribute the goods of a person who dies without having made a will. It is said that, in very early times, the king was entitled in such a case to seize upon the goods, in order that they might be applied to the burial of the deceased, the payment of his debts, and to making a provision for his family. It would appear that this power of the crown over the effects of intestates was greatly abused, for, by Magna Charta, King John granted that "if a freeman should die intestate,

his chattels should be distributed by the hands of his near relations and friends, under the inspection of the church." This, probably, formed the foundation upon which the bishops afterwards founded their right to administer by their own hands the goods of an intestate. There is, at least, no doubt that the power of seizing the goods of an intestate was, at a later period, transferred from the crown to the bishops. The whole property was, in the first instance, placed in the custody of the ordinary, or bishop of the diocese in which the intestate died; and after the deduction of what were technically called "*partes rationabiles*," that is, two-thirds of the whole, which the law gave to the widow and children, the remaining third part vested in the bishop upon trust to distribute that proportion in charity to the poor, or in "pious uses," for the benefit of the soul of the deceased. This trust being greatly abused by the bishops, the statute called the "Statute of Westminster the Second," was passed in the reign of Edward I., which provided that the debts of the deceased should be paid by the ordinary in the same manner as if he had been an executor appointed by a will. The remainder, after payment of debts, still continued applicable to the same uses as before. To prevent the abuses of the power thus retained by the ordinary, and to take the administration out of his hands, the statute of 31 Edward III. cap. 2, directed the ordinary, in case of intestacy, to depute "the nearest and most lawful friends" of the deceased to administer his goods; and these administrators are put upon the same footing with regard to suits and to accounting, as executors appointed by will. This is the origin of administrators; they are merely the officers of the ordinary, appointed by him in pursuance of the statute, which selects the nearest and most lawful friend of the deceased; these words being interpreted to denote the nearest relation by blood who is not under any legal disability. The subsequent statute of 21 Henry VIII. c. 5, enlarges a little more the power of the ordinary, and permits him to grant administration either to the widow or the next of kin,

or to both of them; and, where several persons are equally near of kin, empowers him to select one of them at his discretion.

If none of the kindred are willing to take out administration, a creditor is permitted to do so; and in the absence of any person entitled to demand letters of administration, the ordinary may appoint whomsoever he may think proper to collect the goods of the deceased, for the benefit of such as may be entitled to them. Administrators are appointed even when a will has been made, if by the will no executors are appointed, or if the persons named in it refuse, or are not legally qualified to act; and in any of these cases the administrator only differs from an executor in the name of his office and mode of his appointment. In practice, when the executor refuses to act, it is usual to grant administration to the residuary legatee, that is, to the person to whom, by the will, the remainder of the personal property, after payment of debts and legacies, is given.

In the case of a complete intestacy, it was formerly doubted whether an administrator, when appointed by virtue of 31 Edward III., could be compelled to make any distribution of the effects of the intestate which remained in his hands after payment of debts; for though the administration had been transferred from the ordinary to the next of kin of the deceased, the new administrator stood in much the same position as the ordinary had. The spiritual courts endeavoured to enforce distribution by taking bonds from the administrator for that purpose, but these bonds were declared void by the common law courts. The "Statute of Distributions," 22 & 23 Charles II. c. 10, which is amended by 29 Car. II. c. 3, enacted that the surplus effects, after payment of debts, shall, after the expiration of one year from the death of intestate, be distributed in the following manner:—one-third shall go to the widow, and the remainder in equal proportions to the children of the intestate, or, if dead, to their legal representatives, that is, their lineal descendants: or, if there be no children, or children's legal representatives, then one moiety shall go



to the widow, and the other moiety to the next of kin in equal degree, or to their representatives: if no widow, the whole shall go to the children or their representatives in equal portions: if neither widow nor children, the whole shall be distributed amongst the next of kin or their representatives. The statute of 29 Charles II. c. 3, confirms the old right of the husband to be the administrator of his wife who dies intestate, and to recover and enjoy her personal property.

By the same statute it is directed that no child of the intestate (except it be his heir at law) on whom he settled in his lifetime any estate in lands, or to whom he gave a pecuniary portion equal to the distributive share of the other children, shall have any share of the surplus to be administered; but if the estate or portion thus given him by way of advancement is not equivalent to the other shares, the child so advanced shall have so much of the intestate's personal estate as will put him on an equality with his brothers and sisters.

The Statute of Distributions expressly excepts and reserves the customs of the city of London, of the province of York, and of all other places which have peculiar customs of distributing intestates' effects. These customs resemble, in some degree, the provisions of the statute, though they differ from them in some respects.

The degrees of kindred are reckoned according to the Roman law in the application of the Statute of Distributions [CONSANGUINITY]; and many of the provisions of the statute as to the mode of distribution resemble those of the Roman law of Justinian's period. (*Novel. 118*; and *Gaius, iii. On the Succession to Intestates' Estates.*)

For further information upon the subject of Administrator and Administration, see EXECUTORS.

ADMIRAL, the title of the highest class of naval officers. Various fanciful etymologies of the word have been given; but the word is said to be merely a corruption of the Arabic *Amir* or *Emir*, a lord or chieftain. The *al* is the Arabic definite article *al* (the), without the noun to which it belongs. Eutychius, Patri-

arch of Alexandria, writing in the tenth century, calls the Caliph Omar *Amir al Mumenim*, which he translates into Latin *Imperator Fidelium* (the Commander of the Faithful). To form the word Admiral the first two terms of some title similar to this have been adopted, and the third has been dropped. From this it appears that the word ought properly to be written, or rather ought at first to have been written, Amiral, or Ammiral, as we find it in Milton's expression:—

“The mast  
Of some great Ammiral.”

Milton, holding to this principle of orthography, wrote in Latin *Ammiralatûs Curia* (the Court of Admiralty). The French say *Amiral*, and the Italians *Amiraglio*. The *d* seems to have got into the English word from a notion that Admiral was an abridgment of *Admirable*. The Latin writers of the middle ages sometimes, apparently from this conceit, style the commander of a fleet *Admirabilis*, and also *Admiratus*. The Spaniards say *Admirante* or *Almirante*.

Under the Greek empire, the term *Emir* or *Amir* (*Ἀμύρ*) was used most commonly to designate the governor of a province or district, which was itself called *Ἀμυρᾶδις*. Gibbon states that the emir of the fleet was the third in rank of the officers of state presiding over the navy; the first being entitled the *Great Duke*, and the second the *Great Drungaire*. (*Decline and Fall*, ch. liii.) The holy wars of the twelfth and thirteenth centuries seem to have introduced the term Admiral into Europe. The Admiral of Sicily is reckoned among the great officers of state in that kingdom in the twelfth century; and the Genoese had also their admiral very soon after this time. In France and England the title appears to have been unknown till the latter part of the thirteenth century: the year 1284 is commonly assigned as the date of the appointment of the first French admiral; and the *Amiral de la Mer du Roy d'Angleterre* is first mentioned in records of the year 1297. The person to whom the title is given in this instance is named William de Leybourne. Yet at this time England, although she had an

admiral, had, properly speaking, no fleet; the custom being for the king, when he engaged in a naval expedition, to press into his service the merchant-vessels from all ports of the kingdom, just as it is still the prerogative of the crown to seize the men serving on board such vessels. This circumstance is especially deserving of notice, as illustrating what an admiral originally was. The King of England's admiral of the sea was not necessarily the actual commander of the fleet; he was rather the great officer of state, who presided generally over maritime affairs. Sometimes he was not a professional person at all; at other times he was one of the king's sons, or other near kinsman yet in his nonage, on whom the office was bestowed, as being one of great dignity and emolument: the duties were performed by persons who acted in his name. But these duties were usually not to command ships in battle, but merely to superintend and direct the naval strength of the kingdom, and to administer justice in all causes arising on the seas. The former of these duties is now executed by the department of government called the Admiralty, and the latter by the legal tribunal called the High Court of Admiralty.

Anciently, two or more admirals used often to be appointed to exercise their powers along different parts of the coast. Thus in 1326 mention is made of the Admiral of the King's Fleet, from the mouth of the Thames northward, and of another officer with the same title, commanding from the mouth of the Thames westward. Besides these, there were also Admirals of the Cinque Ports. There are still a vice-admiral and a rear-admiral of the United Kingdom, which places are now sinecures, and are usually bestowed upon naval officers of high standing and eminent services. They are appointed by royal patent, and it is said would exercise the authority of the Lord High Admiral in case of his death, until a successor was appointed. There is also a vice-admiral of the coast of Yorkshire, a nominal office, usually given to a nobleman. It is the opinion of some writers that the first admiral of all England was appointed in the

year 1387. Even the officer bearing this title, however, was not then the person possessing the highest maritime jurisdiction. Above him there was the King's Lieutenant on the Sea (*Locum tenens super Mare*). Also, before the term Admiral was used at all, there was an officer designated the Custos Maris, or Guardian of the Sea.

From the year 1405 (the sixth of Henry IV.) there is an uninterrupted series of Lord High Admirals of England, the office being always held by an individual, till the 20th of November, 1632, when it was for the first time put in commission: all the great officers of state were the commissioners. During the Commonwealth, the affairs of the navy were managed by a Committee of Parliament, till Cromwell took the direction of them himself. On the Restoration, the king's brother, the Duke of York, was appointed Lord High Admiral; and he retained the place till the 22nd of May, 1684, when Charles took it into his own hands. On the duke's accession to the throne, in the beginning of the following year, he declared himself Lord High Admiral. On the Revolution the office was again put in commission; and it continued to be held in this form till 1707, when Prince George of Denmark was appointed Lord High Admiral, with a council of four persons to assist him. On his death, in November, 1708, the Earl of Pembroke was appointed his successor, with a similar council. The earl resigned the office in 1709, since which time, till now, it has always been in commission, with the exception of the period of about sixteen months (from May, 1827, till September, 1828), during which it was held by King William IV., then Duke of Clarence. The commissioners, styled the Lords Commissioners of the Admiralty, were formerly seven, and are now six in number; and the first Lord is always a member of the cabinet. It is the First Lord, indeed, who principally exercises the powers of the office. The patent constituting the commission is issued by writ of privy seal, in the king's name, and, after mentioning the names of the commissioners, it appoints them to be "our commissioners for executing the office of

our High Admiral of our said united kingdom of Great Britain and Ireland, and of the dominions, islands, and territories thereunto belonging, and of our High Admiral of Jamaica, Barbadoes, Saint Christopher, Nevis, Montserrat, Bermudas, and Antegoa, in America, and of Guiney, Binny, and Angola, in Africa, and of the islands and dominions thereof, and also of all and singular our other foreign plantations, dominions, islands, and territories whatsoever, and places thereunto belonging, during our pleasure; giving, and by these presents granting unto you, our said commissioners, or any two or more of you, during our pleasure, full power and authority to do, execute, exercise, and perform all and every act, matter, and thing which do belong or appertain to the office of our High Admiral," &c., as well in those things which concern the navy as in the things which concern "the right and jurisdiction" of the High Admiral.

Till the reign of Queen Anne the salary of the Lord High Admiral was only 300 marks; and the emoluments of the place, which were very large, arose chiefly from perquisites, or droits, as they were called, of various descriptions. Prince George of Denmark resigned all these droits into the hands of the crown, and received in their stead a salary of 7000*l.* a year. The salary of the First Lord is 4500*l.*, and his official residence is the Admiralty, Whitehall. The salary of the junior lords is 1000*l.*, and they have official residences; or, in case of the government not appropriating to them an official residence, a sum of 200*l.* is allowed instead.

The title of Admiral is also given in modern times to naval officers of the highest rank; of which we have in England three classes, namely, Admirals of the Red, of the White, and of the Blue. Admirals bear their flag at the main top-gallant-mast head; vice-admirals, at the fore top-gallant-mast head; and rear-admirals, at the mizen top-gallant-mast head. After the union with Scotland in 1707, the use of the red flag was discontinued, the union-jack being substituted for it; but it was resumed at the naval promotion which took place in 1805, after

the battle of Trafalgar. There are also vice-admirals and rear-admirals of each flag, the former ranking with lieutenant-generals, and the latter with major-generals in the army. The number of admirals in each class, in May, 1844, was as follows:—

	Of the Red.	Of the White.	Of the Blue.
Admirals . . .	9	13	14
Vice-Admirals	14	14	18
Rear-Admirals	28	30	38

A full admiral ranks with a general, and an admiral who is actually the commander-in-chief of a fleet with a field-marshal. The title of Admiral of the Fleet is merely an honorary distinction. The number of admirals on the 1st of January in each of the following years was as follows:—242 in 1815; 228 in 1819; 236 in 1825; 228 in 1830; 211 in 1837; and 211 in 1841. The average age of officers promoted to the rank of rear-admiral (omitting fractional parts of a year) was forty-seven years in 1815; fifty-one in 1819; fifty-five in 1825; fifty-eight in 1830; sixty-one in 1837; and rather more than sixty-one in 1841. The period which rear-admirals had served as captains had increased from nineteen years in 1815 to nearly thirty-five years in 1841; the increase having been from twenty-nine years nine months in 1830 to thirty-four years and nine months in 1841. According to the official Navy List for April, 1844, there were, in addition to the admiral of the fleet, who receives sea-pay of 6*l.* per day, thirty-six admirals, with the sea-pay of 5*l.* per day; forty-six vice-admirals, with the pay of 4*l.* per day; and ninety-six rear-admirals, with the pay of 3*l.* per day; making 179 admirals; but the number in commission in time of peace is only about twelve. In addition to this pay, every commander-in-chief receives a further sum of 3*l.* per day while his flag shall be flying within the limits of his station. The full pay of admirals in 1792 was 3*l.* 10*s.* a day; vice-admirals, 2*l.* 10*s.*; rear-admirals, 1*l.* 15*s.*: in addition to which, compensation in lieu of servants' allowances was given at the rate of 430*l.* 3*s.* a year to admirals; 280*l.* 5*s.* to vice-admirals; and 202*l.* to rear-admirals. The number of servants allowed was re-

duced in 1693; but in 1700 the regulation was rescinded, and by an Order in Council fifty servants were allowed to the Admiral of the Fleet; thirty to admirals; twenty to vice-admirals; and fifteen to rear-admirals. The *half-pay* of the Admiral of the Fleet is at present 1149*l.* 15*s.* per annum; of admirals, 766*l.* 10*s.*; of vice-admirals, 593*l.* 2*s.* 6*d.*; and of rear-admirals, 456*l.* 5*s.* The half-pay of the Admiral of the Fleet was 2*l.* 10*s.* per diem in 1792; that of admirals, 1*l.* 15*s.*; vice-admirals, 1*l.* 5*s.*; and of rear-admirals, 17*s.* 6*d.* (*Report on Army and Navy Appointments.*)

There is no officer with the title of admiral in the navy of the United States of America, the rank corresponding to it being that of commodore, which is given to captains commanding on stations.

ADMIRALTY COURTS are courts which have jurisdiction over maritime causes, whether of a civil or criminal nature. In England, the Court of Admiralty is held before the Lord High Admiral or his deputy, who is called the judge of the court: when there was a Lord High Admiral, the judge of the Admiralty usually held his place by patent from him; but when the office of admiral is executed by commissioners, he holds his place by direct commission from the crown under the great seal.

The Court of Admiralty is twofold,—the Instance Court and the Prize Court. The commissions to hold these courts are perfectly distinct, but are usually given to the same person. Neither of them is a Court of Record.

The civil jurisdiction of the Instance Court extends generally to marine contracts, that is, to such contracts as are made upon the sea, and are founded in maritime service or consideration,—as where the vessel is pledged during the voyage for necessary repairs; and to some few others, which, though entered into on land, are executed entirely upon the sea,—such as agreements for mariner's wages. But if part of a cause of action arises on the sea and part upon the land, the courts of common law exclude the Admiralty Court from its jurisdiction; and even in contracts made abroad they exercise in most cases a concurrent juris-

diction. The Admiralty Court has no cognizance of contracts under seal, except where, from the nature of the subject matter, it has exclusive jurisdiction; as in the case of an hypothecation bond, under which a ship is given in pledge for necessities furnished to the master and mariners. This security, as it only affects the vessel on which the money is advanced, and imposes no personal contract on the borrower, does not fall within the cognizance of the common law. The Instance Court likewise regulates many other points of maritime law, such as disputes between part-owners of vessels, and questions relating to salvage, that is, the allowance made to those who have saved or recovered ships or goods from dangers of the sea. It has also power to inquire into certain wrongs or injuries committed on the high seas, such as collision, or the running foul of one ship against another, and in such cases to assess the damages to be paid to the party injured.

This court is usually held at Doctors'-Commons, like the ecclesiastical courts, to which, in its general constitution, it bears a great resemblance. The law by which its proceedings are governed is composed of such parts of the civil law as treat of maritime affairs, together with the laws of Oleron and other maritime laws, with such corrections, alterations, or amendments as have been introduced by Acts of Parliament, or usage which has received the sanction of legal decisions. (*Blackstone, Commentaries*, iii. 68, 106.)

In criminal matters the Court of Admiralty has, partly by common law, partly by a variety of statutes, cognizance of piracy and all other indictable offences committed either upon the sea or on the coasts, when beyond the limits of any English county; and this (at least since the time of Edward III.) to the exclusion of the jurisdiction of the courts of common law. With respect to certain felonies, committed in the main stream of great rivers below the bridges, the common law and the Admiralty have a concurrent jurisdiction.

The mode of proceeding in the Admiralty courts in criminal trials, like that in all other suits there, was anciently

according to the course of the civil and maritime law, until, in the reign of Henry VIII., a statute was passed which enacted that these offences should be tried by commissioners of oyer and terminer under the king's great seal, and that the proceedings should be according to the law of the land. (Blackstone, *Commentaries*, iv. 268; Hale, *Pleas of the Crown*, ii. 16.) By 7 & 8 Geo. IV. c. 28, all offences tried in the Court of Admiralty are to be punished in the same manner as if committed on land. (§ 12). A similar provision is introduced in 9 Geo. IV. c. 31, for consolidating and amending the law relating to offences against the person. (§ 32). In the act for establishing the Central Criminal Court in London (4 Wm. IV. c. 36), the judges are empowered to determine offences committed within the jurisdiction of the Admiralty of England, and to deliver the gaol of Newgate of any person committed for any such offence. (§ 22). The Admiralty sessions are held twice a year, in March and October, at the Old Bailey. The judge of the Admiralty presides, and two of the common law judges sit with him. The proceedings do not usually occupy more than three or four days in the year.

By 3 & 4 Vict. c. 65, which is an act "to improve the practice and extend the jurisdiction of the High Court of Admiralty of England," the Dean of Arches is empowered to sit as assistant to or in place of the judge of the court; and advocates, surrogates, and proctors of the Court of Arches are admitted in the Court of Admiralty. The judge of the Admiralty is empowered to make rules of court, and is to enjoy all the privileges which pertain to the judges of the superior courts. There is a clause which enables the court to try any questions concerning booty of war which may be referred to it by the Privy Council. The court is empowered to adjudicate on claims for services and necessities to all ships which may not have been on the high seas, but within the body of a county, at the time when such services were rendered. Evidence may be taken *viva voce* in open court, or before commissioners. The court can direct issues on questions of fact arising in any suit to be tried before some judge of the

superior courts of common law; and is empowered to direct new trials, or to grant or refuse them; the exercise of the last-mentioned right to be subject to appeal. Other alterations are made, for which reference should be made to the act.

The Prize Court is the only tribunal for deciding what is, and what is not, lawful prize, and for adjudicating upon all matters civil and criminal relating to prize. By "prize" is to be understood every acquisition made *jure belli* (by the law of war), which is either itself of a maritime character, or is made, whether at sea or by land, by a naval force. All acquisitions by war belong to the sovereign power in the state, but are usually, by the law of each particular state (as in England by several acts of parliament), distributed in certain proportions among the persons who took or assisted in taking them. But the property in the thing captured is held by English jurists, agreeably to the general practice of the law of nations, not to be absolutely taken from the original owners, until, by the sentence of a properly authorized court, it has been condemned as lawful prize. We had, as it should appear, no court authorized to adjudicate on property captured by land-forces, or *booty*, as it is commonly termed by writers on the law of nations; but, when occasion required, commissioners were specially appointed for the purpose. The 3 & 4 Vict. c. 65, enacts that the High Court of Admiralty shall have jurisdiction to decide all matters and questions concerning booty of war when referred to it by the Privy Council. (§ 22.) But property captured by the naval force forms the peculiar province of the Prize Court of the Admiralty. "The end of a Prize Court," says Lord Mansfield, "is to suspend the property till condemnation; to punish every sort of misbehaviour in the captors; to restore instantly, if upon the most summary examination there does not appear sufficient ground; to condemn finally, if the goods really are prize, against everybody, giving everybody a fair opportunity of being heard." (Douglas's *Reports*, p. 572, &c.) The Prize Court has also jurisdiction in matters of capture in port or on land, when the

capture has been effected by a naval force, or a mixed naval and military force.

Vessels taken under the treaties for the suppression of the slave-trade are adjudicated by a mixed commission, composed of English and foreign commissioners.

In 1840 an act was passed (3 & 4 Vict. c. 66) to make provision for the judge, registrar, and marshal of the Court of Admiralty. It fixes the salary of the judge at 4000*l.*, with a retiring pension of 2000*l.* after fifteen years' service, or on becoming permanently disabled from performing his duties. It also prohibits the judge from sitting in parliament. The salary of the registrar is 1400*l.*, without fees. In time of war, or in case of a great increase of business, the registrar's salary may be increased to 2000*l.* He must perform his duties personally; but if, in case of illness or absence, he neglects for two days to appoint a deputy, the judge is empowered to appoint one, and to fix his salary, which is to be paid out of the salary of the registrar. The registrar is appointed by the judge, and must be a proctor of not less than ten years' standing. In case of necessity, the judge may direct the registrar to appoint an assistant, subject to the approval of the judge, with a salary of 1200*l.* One of the duties of the registrar is to attend the hearing of appeals before the Privy Council, instead of the registrars of the Court of Chancery, on whom this duty devolved under 3 & 4 Wm. IV. c. 41. The marshal's salary is 500*l.*, without fees, and may be increased to 800*l.* in time of war, or if the business of the court should increase sufficiently. The fees of the court are carried to an account called the fee fund, out of which all the officers are paid except the judge.

The business and fees of the Court of Admiralty are always much greater in time of war. From 1778 to 1782 Judge Marriot received 4500*l.* a year, the salary being 800*l.*, and the fees averaging 3700*l.* a year. On the return of peace his salary was increased to 980*l.*; and his total income during the peace averaged 1380*l.* a year. In 1794 the salary of the office was increased by the addition of 400*l.* a year. In the first ten years of the French revolutionary war, the income of Sir W.

Scott averaged 5700*l.* a year, the salary being 2500*l.* and the fees 3200*l.* About a thousand cases a year were determined by the court during the war. (Evidence of Dr. Nichol before Select Committee on Admiralty Courts, in 1833; reprinted in 1843 by order of the House of Commons.) The Prerogative and Admiralty Courts were presided over by one judge on two occasions in the last century, from 1710 to 1714, and from 1773 to 1778. The Parliamentary Committee of 1833 recommended that the two judges of these courts should sit interchangeably, when occasion may require, either in one court or the other.

All sovereign states which are engaged in maritime war establish Admiralty Courts, for the trial of prizes taken by virtue of the commissions which they have granted. In determining prize cases, the Admiralty proceed on certain general principles which are recognised among civilized nations. Thus the commission which empowers the Prize Court to determine cases of prize, requires it to "proceed upon all and all manner of captures, seizures, prizes, and reprisals of ships and goods, which are or shall be taken, and to hear and determine according to the course of the Admiralty and the law of nations."

The Court of Admiralty for Scotland was abolished by 1 Wm. IV. c. 69. The representative of the nominal head of the court (the Lord High Admiral) was the judge; and there were inferior Admiralty jurisdictions, in which the law was administered by admirals-depute. The cases formerly brought before this court are now prosecuted in the Court of Session, or in that of the sheriff, in the same way as ordinary civil causes. The Court of Justiciary has become the tribunal for the decision of the more important maritime offences. The inferior jurisdictions not dependent on the High Court of Admiralty were not abolished by the above act. (*Burton's Laws of Scotland.*) There is an Admiralty Court in Ireland, but a prize commissioner has never been sent to it. By § 108 in the Corporations Reform Act (5 & 6 Wm. IV. c. 76) all chartered Admiralty jurisdictions were abolished, but that of the Cinque Ports,

attached to the office of Lord Warden, was expressly reserved. In several of our colonies there are Courts of Vice-Admiralty, which not only have authority both as Instance Courts and Prize Courts, but have also, in certain revenue cases, concurrent jurisdiction with the colonial Courts of Record. (Stokes, *On the Colonies*, p. 357.) From the Vice-Admiralty Courts of the colonies an appeal lies, in instance causes, to the Court of Admiralty in England; and from the Court of Admiralty in England an appeal lies, in instance causes (whether originating in that court or coming before it by appeal), to the king in council; to which body the powers in maritime as well as ecclesiastical causes were transferred from the High Court of Delegates by 2 & 3 Wm. IV. c. 92. From prize causes, whether in the Vice-Admiralty Courts or in the Court of Admiralty in England, the appeal lies directly to certain commissioners of appeal in prize causes, who are appointed by the king under the great seal, and are usually members of his privy council, and whose appointment is generally regulated or recognised by treaties with foreign nations.

For the law on the whole of this subject, see Dr. Browne's *View of the Civil Law*, and the *Law of the Admiralty*; and Comyn's *Digest*, tit. "Admiralty."

#### ADMIRALTY, DROITS OF. [DROITS OF ADMIRALTY.]

**ADOPTION**, from the Latin *adoptio*. By the Roman law, if a person had no children of his own, he might make those of any other person his children by adoption. The relation of father and son at Rome originally differed little from that of master and slave. Hence, if a person wished to adopt the son of another, the natural father transferred (manipated) the boy to him by a formal sale before a competent magistrate, such as the prætor at Rome, and in the provinces before the governor. [MANCIPATION.] The father thus conveyed all his paternal rights, and the child, from that moment, became in all legal respects the child of the adoptive father. If the person to be adopted was his own master (*sui juris*), the mode of proceeding was by a legislative act of the people in the *comitia curiata*.

This was called *adrogatio*, from *rogare*, to propose a law. In the case of *adrogatio*, it was required that the adoptive father should have no children, and that he should have no reasonable hopes of any. In either case the adopted child became subject to the authority of his new father; passed into his family, name, and sacred rites; and was capable of succeeding to his property. Clodius, the enemy of Cicero, passed by this ceremony of *adrogatio* from the patrician to the plebeian class, in order to qualify him to be tribune.

The history of Rome abounds with instances of adoption. Thus one of the sons of L. Æmilius Paulus, the conqueror of Macedonia, was adopted by the son of Scipio Africanus the Elder, and thus acquired the name of Publius Cornelius Scipio; he was also called Æmilianus, to point out the family of his birth; and when he had destroyed Carthage, in the third Punic war, he received, like his adoptive grandfather, the appellation of Africanus, and is usually spoken of in history as Scipio Africanus the Younger.

Women could not adopt a child, for by adoption the adopted person came into the power, as it was expressed, of the adopter; and as a woman had not the parental power over her own children, she could not obtain it over those of another by any form of proceeding. Under the emperors it became the practice to effect *adrogatio* by an Imperial Rescript, but this practice was not introduced till after the time of Antoninus Pius (A.D. 138-161).

There was also adoption by testament: thus Julius Cæsar the Dictator adopted his great nephew Octavius, who was thenceforth called Caius Julius Cæsar Octavianus, until he received the appellation of Augustus, by which he is generally known. But this adoption by testament was not a proper adoption, and Augustus had his testamentary adoption confirmed by a *Lex Curiata*. Augustus in his lifetime adopted his stepsons Tiberius Nero and Claudius Drusus, the former of whom succeeded him in the empire. (Tacitus, *Ann.* i. 3; Suet. *Tiberius*, 15.) Tiberius, by the order and during the lifetime of Augustus, adopted his nephew Germanicus, though

Tiberius had then a son of his own. Germanicus died in the lifetime of Tiberius; and on the death of Tiberius, Caligula, the son of Germanicus, became emperor. These adoptions by Augustus and Tiberius were designed to secure the succession to the imperial power in their family. At a subsequent period, the emperor Claudius adopted his step-son Domitius, afterwards the Emperor Nero, to the prejudice of his own son Britannicus. Tacitus remarks that Nero was the first stranger in blood ever adopted into the Claudian Gens. (Tacitus, *Ann.* xii. 25.) In the time of Augustus, the Julian law on marriage was enacted (B.C. 18), which contained heavy penalties upon celibacy, and rewards for having children. This law was so extremely unpopular, that, Suetonius says, it could not be carried until some of the obnoxious clauses were modified. (Suetonius, *Aug.* 34.) Afterwards, however, a law passed, called, from the Consuls who proposed it, *Lex Papia Poppæa*; and sometimes *Lex Julia et Papia Poppæa*, because it was founded on the Julian law on marriage, by which many privileges were given to those who had children; and among other things, it was declared that, of candidates for prætorships and other offices, those should have the preference who had the greatest number of children. This occasioned an abuse in the adoption of children. Tacitus says that in the time of Nero a "pestilent abuse was practised by childless men, who, whenever the election of magistrates or the allotment of provinces was at hand, provided themselves with sons by fraudulent adoptions; and then when, in common with real fathers, they had obtained prætorships and provincial governments, they instantly released themselves from their adopted sons. Hence the genuine fathers betook themselves with mighty indignation to the senate," and petitioned for relief. This produced a *Senatus consultum*, that fraudulent adoptions should not qualify for public office or capacitate a person for taking property by testament. (Tacitus, *Annal.* xv. 19.)

The eleventh title of the first book of Justinian's Institutes is concerning adoption. The Imperial legislation altered

the old law of adoption in several respects. It declares that there are two kinds of adoption: one called *adrogatio*, when by a rescript of the emperor (*principali rescripto*) a person adopts another who is free from parental control; the other, when by the authority of the magistrate (*imperio magistratus*) he who is under the control of his parent is made over by that parent to another person, and adopted by him either as his son, his grandson, or a relation in any inferior degree. Females also might be adopted in the same manner. But when a man gave his child to be adopted by a stranger, none of the parental authority passed from the natural to the adoptive father; the only effect was, that the child succeeded to the inheritance of the latter if he died intestate. It was only when the adopter was the child's paternal or maternal grandfather, or otherwise so related to him as that the natural law (*naturalia jura*) concurred with that of adoption, that the new connection became in all respects the same with the original one. It was also declared that the adopter should in all cases be at least eighteen years older than the person whom he adopted. Women were not empowered by the legislation of Justinian to adopt; but after having lost children of their own by death, they might by the indulgence of the emperor be permitted to receive those of others in their place. A slave, on being named a son by his master before a magistrate, became free, but acquired no filial rights.

Adoption (*εἰσποίησις, ποίησις, θέσις*) was common among the Athenians, and a man might adopt a person either in his lifetime or by his testament, and either a male or a female. The adopted person was transferred by the adoption from his own family and his own *demoi*, to those of the adopter.

Adoption was no part of the old German law: it was introduced into Germany with the Roman law, in the latter part of the middle ages. The general rules concerning adoption in Germany are as follow; but there are some variations established by the law of the several states.

The man who wishes to adopt must have no children of his own, or the adop-



tion must not be disadvantageous to them. As the act of adoption is an imitation of the natural relation of parent and child, and intended to supply its deficiencies, the adopter must be at least eighteen years older than the person to be adopted, and for the same reason he must not have been intentionally castrated. The guardian cannot adopt his ward before he has accounted for his guardianship; and as a general rule a poor man cannot adopt a rich man. The adopter must have attained a considerable (it is not said what) age, or for other reasons have no hopes of children of his own. The transaction must take place before the competent jurisdiction, and in the case of the adrogation or adoption of women, the approbation of the prince is required. It is also necessary to have the consent of the parents and other ancestors who have hitherto had the child in their power, and as such would for the future be entitled to the same right; and also the consent of the child to be adopted. In the case of Adrogation, when the person to be adopted is a minor, there must also be an inquiry whether the adrogation is advantageous to him; the consent of the next of kin and guardians of the person to be adrogated, and security on the part of the adrogator, that in case the child dies in his minority, he shall transfer the property to the nearest kinsman, or to a person substituted by the natural father.

The effects of adoption are: 1. In the case of adoption by a man, he acquires the *patria potestas* over the adopted son and the children of the adopted son, so far as they are in his power. 2. The adopted son acquires all the rights of a natural-born son, and among them the capacity to inherit. He also takes the family name of the adoptive father, which, however, in Germany, he only adds to his old family name. In the case of adoption by a man, he also becomes the Agnate of all the Agnati of the adoptive father, and all his previous relationships of Agnation cease. But no alteration is produced in the relationship of Cognation. Adoption, however, in respect of nobility and the succession to fief and family property, has no effect; a rule which had no other foundation than the wish of the nobility to

keep themselves free from the influence of the Roman law in their family relations. 3. The adoption is permanent, yet the adoptive father can by emancipation, and the adopted son at a later period, dissolve the relationship on the same conditions under which the *patria potestas* can be dissolved on other occasions. But in the case of Adrogation, when the adoptive father emancipates or disinherits the adopted son without good reason, he must surrender not only all the property which the adopted son has brought and in the mean time acquired, but he must also leave him the fourth part of his own property (*quarta Divi Pii*). When an ancestor gives his own natural-born children and other descendants in adoption, as a general rule the full effects of adoption (*adoptio plena*) only take place when the adoptive father is an ancestor; otherwise the adoption had only a minor effect (*adoptio minus plena*), namely, the capacity to inherit from the adoptive father in case of intestacy. (Article, by Welcker, in the *Staats-Lexicon* of Rotteck and Welcker.) This account is sufficient to give a general view of the form and effects of adoption in Germany: but the account is deficient in precision. The German law of adoption is founded on the Roman, as will be obvious by comparing the German with the Roman system. There are variations in the several German states. The Prussian law does away with all distinction between *adoption* and *adrogation*, and allows the adopted son who is of age to manage his own property. The Austrian law does the same. Both also agree in requiring the age of the adoptive father to be fifty at least. The Prussian law, with respect to the adopted son, merely requires him to be younger than the father; the Austrian code requires him to be eighteen years younger than the adoptive father. (Ersch and Gruber's *Encyclopädie*, art. "Adoption.")

The French law of adoption is contained in the eighth title of the first book of the *Code Civil*. The following are its principal provisions:—Adoption is only permitted to persons above the age of fifty, having neither children nor other legitimate descendants, and being at least fifteen

years older than the individual adopted. It can only be exercised in favour of one who has been an object of the adopter's constant care for at least six years during minority, or of one who has saved the life of the adopter in battle, from fire, or from drowning. In the latter case, the only restriction respecting the age of the parties is, that the adopter shall be older than the adopted, and shall have attained his majority, or his twenty-first year; and if married, that his wife is a consenting party. In every case the party adopted must be of the age of twenty-one. The form is for the two parties to present themselves before the justice of the peace (*juge de paix*) for the place where the adopter resides, and in his presence to pass an act of mutual consent; after which the transaction, before being accounted valid, must be approved of by the tribunal of *first instance* within whose jurisdiction the domicile of the adopter is. The adopted takes the name of the adopter in addition to his own; and no marriage can take place between the adopter and either the adopted or his descendants, or between two adopted children of the same individual, or between the adopted and any child who may be afterwards born to the adopter, or between the one party and the wife of the other. The adopted acquires no right of succession to the property of any relations of the adopter; but in regard to the property of the adopter himself, it is declared that he shall have precisely the same rights with a child born in wedlock, even although there should be other children born in wedlock after his adoption. It has been decided in the French courts that aliens cannot be adopted.

The law of the Franks allowed a man who had no children to adopt the children of others; the adoption was effected by a transfer of the adopter's property to the person adopted; with a reservation of the usufruct thereof to the adoptive father for his life. The adoption was a solemn act, which took place before the king or other competent authority. The old law of Aragon allowed a man to adopt a son, though he had sons of his own, and the adopted son was on the same footing as a son of a man's body with respect to

right to the inheritance and liability for the debts of his deceased parent. This in fact is the Roman law. (Du Cange, *Gloss. ad Script. Med. et Infim. Latinitatis*, "Adoptio Filiorum.")

Adoption is still practised both among the Turks and among other Eastern nations. It is common for a rich Turk who has no children of his own, to adopt as his heir the child of persons even of the poorest class. The bargain is ratified by the parties going together before the Cadi, and getting their mutual consent recorded; after which the child cannot be disinherited by his adoptive father. D'Herbelot states that, according to the law of Mohammed, a person becomes the adopted son of another by undergoing the ceremony of passing through his shirt; whence the expression, to draw another through one's shirt, signifies to adopt him for a son. In India the same thing is said to be frequently done by the two parties merely exchanging girdles. In the Code of Gentoo Laws published by Mr. Halhed, the 9th section of the 21st chapter is entitled 'Of Adoption.' The law permits a child under five years of age to be given up for adoption by the father for a payment of gold or rice, if he have other sons, on the parties going before a magistrate and having a *jugg*, or sacrifice, performed. A woman, however, it is added, may not adopt a child without having her husband's consent; and there is even some doubt if she may with that. "He," concludes the law, "who has no son, or grandson, or grandson's son, or brother's son, shall" (may?) "adopt a son; and while he has one adopted son, he shall not adopt a second."

There is no Adoption in the English or Scotch systems of Law.

The practice of adoption, when properly regulated, appears to be a useful institution. The existence of families is necessary to the conservation of a state; and there seems to be no good reason why those who have no children of their own should not by adoption add to their own comfort while they confer a benefit on others. The practice, however, may be less applicable to some states of society than to others, and before such an institution is established anew in any country,

the whole of the reasons on which it was originally founded in the law of Athens and Rome should be well considered.

ADULT-SCHOOLS are establishments for instructing in reading and other branches of knowledge those persons who have not been educated in their youth. Thirty or forty years since, there were numerous schools for adult instruction in reading and writing; but at the present time, and for some years past, the efforts of the friends of education have been directed entirely to the education of the young; and the necessity of schools for adults is probably not so great now as at the period when they were first established. There are a few schools for adults in the colliery districts in the north of England. When the Statistical Society instituted an inquiry into the state of education in Westminster, there was only one adult-school. But there are adult-schools in other parts of London, both for young men and young women, in which reading, writing, and arithmetic are taught. Mechanics' Institutes may be considered as adult-schools for instruction in various branches of knowledge.

The number of adults who are incapable of writing is still very large. In the three years ending 30th of June, 1841, the proportion for England and Wales of persons who signed their marriage register with their marks was 33 per cent. of the men, and 49 per cent. of the women: in Hertfordshire, Bedfordshire, and Monmouthshire, the proportion for the men exceeded 50 per cent., and in several counties it exceeded 60 for the women; and for North Wales it was 70 per cent. This test shows the state of education ten or twenty years ago; and for the last of the three years there was a slight increase of those who wrote their names.

The first school avowedly established for the purpose of instructing adults was formed in 1811, through the exertions of the Rev. T. Charles, a clergyman in Merionethshire. Some grown-up persons had previously attended his parish Sunday-school, but they showed a disinclination to learn with children, and this circumstance led to the adoption of more extended views for their benefit. Considerable success, both in the number and

progress of the pupils, and their improved conduct and character, caused the establishment of other adult-schools throughout Wales.

About the same time, and without any concert or connection with the schools in Wales, a school was established at Bristol, through the instrumentality of W. Smith. This person, "who collected the learners, engaged the teachers, and opened the two first schools in England for instructing adults exclusively, in borrowed rooms, and with borrowed books,"\* was the door-keeper to a dissenting chapel. He devoted three out of eighteen shillings, his weekly earnings, to defray the expense of giving to his brethren the means of studying the Scriptures, and of obtaining knowledge from other sources. A short time after these first efforts were made, a Society was formed for the furtherance of his benevolent views. In the first Report of this Society, dated April, 1813, it was stated that 222 men and 231 women were already receiving education. Adult-schools were soon afterwards established in different parts of the kingdom, at Uxbridge, Norwich, Ipswich, Sheffield, Salisbury, Plymouth, and other places. Many instances occurred of persons acquiring the art of reading in old age, who gladly availed themselves, in the last few months of their existence, of the means afforded them of reading for themselves the hopes and promises held out by the Scriptures.

The following are the particulars respecting an experiment in adult education tried with success by Dr. Johnstone, at Edgbaston Hall, near Birmingham. This school was established about 1815; and the only expense incurred by the individual with whom the plan originated, was that of providing a room once a week, with fire and candle. It was soon attended by forty members—more than half the labouring population of the parish—of all ages from eighteen to seventy. The teaching was confined to reading and writing; and the men taught each other. The school assembled once a week, on Sunday evening, for two hours; but the men often studied their lessons at home

\* Pole's History and Origin of Adult-Schools.

on the week-days. A man who was quite ignorant of reading generally acquired the art of reading with pleasure to himself in the course of six months. The men were generally fonder of writing than of reading. In many instances the members of the school were enabled to turn their acquirements, small as they were, to very good account.

**ADULTERATION** (from the Latin *Adulteratio*) is the use of ingredients in the production of any article, which are cheaper and not so good, or which are not considered so desirable by the consumer as other or genuine ingredients for which they are substituted. The sense of the Latin word is the same. (Pliny, *Hist. Nat.* xxi. 6.) The law does not generally consider adulteration as an offence, but relies apparently on an evil of this nature being corrected by the discrimination and good sense of the public. In Paris, malpractices connected with the adulteration of food are investigated by the Conseil de Salubrité, acting under the authority of the prefect of police. In this country, where the interests of the revenue are concerned, strict regulations have been resorted to in order to prevent adulteration. It is not, however, heavy customs or excise-duties alone which encourage adulteration, for the difference in price between the genuine and the spurious ingredient, when both are free from taxation, presents equal inducement to the practice. The following is an abstract of the law respecting the adulteration of some of the principal articles of revenue:—

Tobacco-manufacturers are liable to a penalty of 200*l.* for having in their possession sugar, treacle, molasses, honey, comings or roots of malt, ground or unground roasted grain, ground or unground chicory, lime, umbre, ochre, or other earths, sea-weed, ground or powdered wood, moss or weeds, or any leaves, or any herbs or plants (not being tobacco leaves or plants), respectively, or any substance or material, syrup, liquid, or preparation, matter, or thing, to be used or capable of being used as a substitute for, or to increase the weight of tobacco or snuff (5 & 6 Vict. c. 93, § 8). Any person engaged in any way in the preparation of articles to imitate or resemble

tobacco or snuff, or who shall sell or deliver such articles to any tobacco-manufacturer, is also liable to a penalty of 200*l.* (§ 8). The penalty for actually adulterating tobacco or snuff is 300*l.* (§ 1); and for having such tobacco or snuff in possession, 200*l.* (§ 3). The Excise-survey on tobacco-manufacturers, abolished by 3 & 4 Vict. c. 18, has been re-established in consequence of the extraordinary extent to which adulteration was carried.

The ingredients used in the adulteration of beer are enumerated in the following list of articles which brewers or dealers and retailers in ale and beer are prohibited from having in their possession under a penalty of 200*l.* (56 Geo. III. c. 58, § 2). These articles are—molasses, honey, liquorice, vitriol, quassia, coculus Indicus, grains of Paradise, Guinea pepper, and opium; and preparations from these articles are also prohibited. They are used either as substitutes for hops, or to give a colour to the liquor in imitation of that which it would receive from the use of genuine ingredients. By § 3 of the same act a penalty of 500*l.* is imposed upon any chemist, druggist, or other person, who shall sell the articles mentioned in § 2 to any brewer or dealer in beer. The penalties against dealers in beer in the above act are extended to beer-retailers under 1 Wm. IV. c. 64, and 4 & 5 Wm. IV. c. 85, which acts also contain special provisions against adulteration applicable to this principal class of dealers. [ALEHOUSES.]

Tea, another important article of revenue, is protected from adulteration by several statutes. The act 11 Geo. I. c. 30, § 5, renders a tea-dealer liable to a penalty of 100*l.*, who shall counterfeit, adulterate, alter, fabricate, or manufacture any tea, or shall mix with tea any leaves other than leaves of tea (§ 5). Under 4 Geo. IV. c. 14, tea-dealers who dye, fabricate, or manufacture any sloe-leaves, liquorice-leaves, or the leaves of tea that have been used, or any other leaves in imitation of tea; or shall use terra japonica, sugar, molasses, clay, logwood, or other ingredients, to colour or dye such leaves; or shall sell or have in their possession such adulterated tea, are liable to

a penalty of 10*l.* for every pound of such adulterated tea found in their possession (§ 11). The 17 Geo. III. c. 29, also prohibits adulteration of tea (§ 1).

The adulteration of coffee and cocoa is punished with heavy penalties under 43 Geo. III. c. 129. Any person who manufactures, or has in his possession, or who shall sell, burnt, scorched, or roasted peas, beans, grains, or other grain or vegetable substance prepared as substitutes for coffee or cocoa, is liable to a penalty of 100*l.* (§ 5). The object of § 9 of 11 Geo. IV. c. 30, is similar. Chicory has been very extensively used in the adulteration of coffee in this country. This root, which possesses a bitter and aromatic flavour, came into use on the Continent in consequence of Bonaparte's decrees excluding colonial produce. Coffee with which a fourth or a fifth part of chicory has been mixed, is by some persons preferred as a beverage to coffee alone; but in England it is used to adulterate coffee in the proportion of one-half. The Excise has for some time permitted the mixture of chicory with coffee. In 1832 a duty was laid on chicory, and this duty, which has been increased once before, the chancellor of the exchequer is about to raise, and subject to excise survey. But chicory itself has been subject to adulteration, and the proposed increase of duty will be likely still further to extend the practice. Besides the quantity imported, chicory is also grown in England, and it will be necessary to place the cultivation under some restriction, or perhaps, as in the case of tobacco, to prohibit the growth of it altogether.

The manufacturer, possessor, or seller of adulterated pepper is liable to a penalty of 100*l.* (59 Geo. III. c. 53, § 22). The act 9 Geo. IV. c. 44, § 4, extends this provision to Ireland.

In the important article of bread, there are prohibitions against adulteration, though they are probably of very little practical importance. The act 6 & 7 Wm. IV. c. 37, which repealed the several acts then in force relating to bread sold beyond the city and liberties of London, and ten miles of the Royal Exchange, was also intended to prevent the adulteration of meal, flour, and bread

beyond these limits. No other ingredient is to be used in making bread for sale except flour or meal of wheat, barley, rye, oats, buckwheat, Indian corn, peas, beans, rice or potatoes, mixed with common salt, pure water, eggs, milk, barm, leaven, potato or other yeast, in such proportions as the bakers think fit (§ 2). Adulterating bread, by mixing other ingredients than those mentioned above, is punishable by a fine of not less than 5*l.* nor above 10*l.*, or imprisonment for a period not exceeding six months; and the names of the offenders are to be published in a local newspaper (§ 8). Adulterating corn, meal, or flour, or selling flour of one sort of corn as flour of another sort, subjects the offender to a penalty not exceeding 20*l.* and not less than 5*l.* (§ 9). The premises of bakers may be searched, and if ingredients for adulterating meal or flour be found deposited, the penalty for the first offence is 10*l.* and not less than 40*s.*; for the second offence 5*l.*, and for every subsequent offence 10*l.*; and the names of offenders are to be published in the newspapers (§ 12). There are penalties for obstructing search (§ 13). Any miller, mealman, or baker acting as a justice under this statute incurs a penalty of 100*l.* (§ 15).

The above act did not apply to Ireland, where the baking trade was regulated by an act (2 Wm. IV. c. 31), the first clause of which, relating to the ingredients to be used, was similar to the English act just quoted. In 1838 another act was passed (1 Vict. c. 28), which repealed all former acts relating to the sale of bread in Ireland. The preamble recited that the act 6 & 7 Wm. IV. c. 37, had been found beneficial in Great Britain. The clauses respecting adulteration are similar to the English act.

The several acts for regulating the making of bread within ten miles of the Royal Exchange (which district is excluded from the operation of 6 & 7 Wm. IV.) were consolidated by the act 3 Geo. IV. c. 106. Under this act any baker who uses alum, or any other unwholesome ingredient, is liable to the penalties mentioned in § 12 of 6 & 7 Wm. IV. c. 37. Any ingredient or mixture found

within the house, mill, stall, shop, &c. of any miller, mealman, or baker, and which shall appear to have been placed there for the purpose of adulteration, renders him liable to similar penalties.

Other articles besides those which have been mentioned are adulterated to a great extent; but perhaps the remedy for the evil is not unwisely left to the people themselves, who probably are less likely to be imposed upon when depending on the exercise of their own discrimination, than if a commission of public functionaries were appointed, whose duty should consist in investigating as a branch of medical jurisprudence whatever related to the subject of adulteration. The interference of the government in this country with the practice of adulteration, except in the case of bread and drugs [APOTHECARIES' COMPANY], has evidently had no other object than the improvement of the revenue.

Adulteration and the deceitful making up of commodities appear to have frequently attracted the attention of the legislature in the sixteenth century, and several acts were passed for restraining offences of this nature. The act 23 Eliz. c. 8, prohibits under penalties the practice of mixing bees'-wax with rosin, tallow, turpentine, or other spurious ingredient. The following acts have reference chiefly to frauds in the making up of various manufactured products:— 3 Hen. VIII. c. 6; 23 Hen. VIII. c. 17; 1 Eliz. c. 12; 3 & 4 Edw. VI. c. 2; 5 & 6 Edw. VI. c. 6; 5 & 6 Edw. VI. c. 23.

**ADULTERY** (from the Latin *adulterium*) according to English law is the sexual connection of a man, whether married or single, with another man's wife; or of a married man with an unmarried woman. If both the adulterer and the adulteress are married, it is sometimes called double adultery; if one only is married, it is called single adultery.

Adultery was punished by the Jewish law with death; but the kind of adultery which by the Mosaic law constituted a capital crime was not every violation of chastity of which a married person, whether husband or wife, might be guilty; but only the sexual connection of a wife

with any other man than her husband. This distinction was analogous to the whole system of the Jewish marriage-law; by which the husband and wife had not an equal right to restrain each other from infidelity; for the husband might marry other wives, or take concubines or slaves to his bed, without giving his first wife a legal right to complain of any infringement of her matrimonial rights.

By the Athenian law, the husband might kill the adulterer, if he detected him in the act of dishonouring him. (*Lysias, Oration on the Death of Eratosthenes.*) The husband at Athens might also prosecute the adulterer by law; or he might, if he pleased, receive from him a sum of money by way of compensation, without instituting any legal process. It appears that it was not adultery at Athens for a married man to have sexual intercourse with an unmarried woman, or with any woman who prostituted herself, or was in the habit of selling anything in the public market.

By the Romans adultery was defined to be "sexual intercourse with another man's wife." It was adultery whether the male was married or not; but the sexual connection of any man with a woman who was not married, was not adultery. It seems that the old Roman law allowed the husband and kinsmen (the husband's kinsmen) to sit in judgment on the adulterous wife. (*Dionysius Halicarn. Antig. Rom. ii. 25; Suetonius, Tiberius, c. 35.*) The Julia Lex on adultery was passed in the time of Augustus (perhaps about B.C. 17). It repealed some old rules of law on the same subject, with which we are not acquainted, and introduced new rules. The Julian law allowed the father, whether the natural or adoptive father, to kill the adulterer and adulteress in certain cases which were laid down by the law; the husband also could in certain cases kill the adulterer when he caught him in the act, but not the wife. If the husband kept his wife after he had discovered an act of adultery committed by her, he was guilty of the offence called *Lenocinium*. Sixty days were allowed for the husband or the father, in whose power the adulteress was, for commencing legal proceedings. It appears

from the terms of the law that the sixty days were to be reckoned from the day of divorce, for the husband was bound to divorce his wife as soon as the fact of the adultery was known to him. After the sixty days were expired, any other person might accuse the adulteress. A wife convicted of adultery lost half of her dos, and the third part of any other property that she had, and was banished (*relegata*) to some miserable island. The adulterer lost half of his property, and was also banished. The law did not inflict the punishment of death; those cases in which death was inflicted, under the early emperors, were extraordinary, and were either irregular exercises of power, or the charge of treason (*majestas*) was either directly or by implication added to that of adultery. A constitution of Constantine (*Cod. ix. tit. 30*) made adultery a capital offence in the male; but perhaps the genuineness of the constitution may be doubted. Justinian (*Novel. 134, c. 10*) confirmed the legislation of Constantine, whatever it was, and added confinement in a convent as the punishment of the adulteress, after she had been whipped. The husband might, if he liked, take her out of the convent within two years, and cohabit with her again; but if he did not, or if he died in the two years, her head was shaved and she was compelled to spend the rest of her life in the convent. The same Novel also imposed pecuniary penalties both on the adulterer and adulteress. The provisions of the Julian law are collected from various sources. (*Dig. 48, tit. 5; Paulus, Sentent. Recept. ii. tit. 26.*)

By the canon law, which is now more or less part of the law of most Christian countries, adultery is defined to be the violation of conjugal fidelity; and, consequently, the incontinency of the wife and husband stand upon the same foundation. Hence arises the distinction above alluded to between a single and double adultery.

Double and single adultery are punishable with various degrees of severity in most of the countries of modern Europe; but it is believed that in none of them, at the present day, is either of these offences capital.

There are some traces of the punish-

ment of adultery as a crime in very early periods of the history of English law. Lord Coke says, that in ancient times it was within the jurisdiction of the sheriff's tourns and court-leet, and was punished by fine and imprisonment (*3 Inst. 306*); but at the present day, adultery is not the subject of a criminal prosecution in the temporal courts, and the cognizance of the offence is confined to the Ecclesiastical Courts, according to the rules of the canon law. Instances of criminal prosecutions in the spiritual courts for adultery are extremely rare; and if instituted to the conviction of the parties, the infliction of a slight fine or penance "for the benefit of the offender's soul" (*in salutem animæ*), as it was termed, would be the only result. In the year 1604 (2 James I.) a bill was brought into Parliament "for the better repressing the detestable crime of adultery." This bill went through a committee in the House of Lords; but, upon being reported, it was suggested to the House that the object contemplated by the measure was the private interest of some individuals, and not the public good; whereupon the bill was dropped. (*Parl. History*, vol. v. p. 88.) During the Commonwealth, adultery, in either sex, was made a capital felony (*Scobel's Acts*, part ii. p. 121), but at the Restoration this law was discontinued.

Adultery, however, comes under the cognizance of the temporal courts in England as an injury to the husband. Thus a man may maintain an action against the seducer of his wife, in which he may recover damages as a compensation for the loss of her services and affections in consequence of the adultery. For the particular rules and proceedings in this action, see Selwyn's *Nisi Prius*, title "Adultery." But the legal nature of the union of husband and wife does not give the wife the same rights as the husband, and she has no remedy by the common or statute law in case of the husband's sexual intercourse with another woman: she has no redress for his misconduct in the ordinary courts. Her only remedy is in the Ecclesiastical Courts, where she can obtain a separation from her husband, but not a complete divorce. The hus-

band, after obtaining a verdict against the adulterer in a court of law, and a sentence of separation by the Ecclesiastical Court, may obtain a divorce from his wife by Act of Parliament; and in no other way. [DIVORCE.]

It is not easy to define the law of Scotland relative to adultery. Heavy penalties were levelled against it by various acts of the sixteenth century, and at last by the Act 1563, c. 74, it was ordained that "all notour or manifest committers of adulterie, in onie time to cum, sall be punished with all the rigour unto the death, as weil the woman as the man, doer and committer of the samin:" and certain criterions were established for distinguishing the notorious and habitual practice of the crime which was thus punishable with death, from those isolated acts which were visited by the common law with a less punishment. The latest instance of sentence of death awarded for adultery is, perhaps, the case of Margaret Thomson, 28th May, 1677. All the statutes on the subject have, according to the peculiar practice of Scotland, expired by long desuetude. On the other hand, however, if the public prosecutor should think fit to prosecute for adultery, the High Court of Justiciary has authority to count it within the class of offences punishable at discretion. Such prosecutions are however unknown. In the seventeenth and the commencement of the eighteenth century, the church courts made themselves very active in requiring the civil magistrate to adjudicate in this offence; but this means of punishment was abolished by the 10th Anne, c. 7, § 10, which prohibited civil magistrates from giving effect to ecclesiastical censures. Of late years the doctrine has been admitted by Scottish lawyers, that the seduction of a wife is a good ground for an action of damages; but such prosecutions are wholly unknown in practice. Adultery is a good ground for an action of divorce. [DIVORCE.] (Hume *On Crimes*, i. 452-458; Stair's *Institute*, b. 1, tit. 4, § 7; Erskine's *Institute*, b. 1, tit. 6, § 43.)

The French law (*Code Pénal*, 324) makes it excusable homicide if the husband kills the wife and the adulterer in

the act of adultery in his own house. The punishment of a woman convicted of adultery is imprisonment for a period of not less than three months, and not exceeding two years; but the prosecution can only be instituted at the suit of the husband; and the sentence may be abated on his consenting to take back the wife (§ 337, 337). The paramour of a wife convicted of adultery is liable to imprisonment for not less than three months, or for a period not exceeding two years; and to a penalty of not less than 100 francs, or not exceeding 2000 francs (§ 338). A husband convicted, on complaint of the wife, of keeping a concubine in his own house, is liable to penalties of not less than 100 or not more than 2000 francs; and under these circumstances he cannot institute a suit against his wife for adultery (§ 339).

In the State of New York, the Court of Chancery is empowered to pronounce a divorce à vinculo matrimonii in the case of adultery, and in no other case, upon the complaint either of the husband or the wife. The process is by bill filed by the complaining party. [DIVORCE.] If a divorce is pronounced, the defendant is disabled from marrying during the lifetime of the other party. Adultery appears to be a ground of divorce in all the American States, so far as can be collected from the statement in Kent (*Commentaries*, vol. ii.). A case is mentioned by Kent as decided in New Jersey, in which it was adjudged that a married man was not guilty of adultery in having carnal connection with an unmarried woman. By a statute of North Carolina, adultery is an indictable offence. In Alabama both adultery and fornication are indictable offences in persons living together in adultery or fornication. The law of Massachusetts also punishes adultery and fornication as indictable offences.

Du Cange (*Gloss. Med. et Infim. Latin.*) contains much curious matter on the punishment of adultery among various nations of the middle ages.

The subject of adultery and its penalties is one of great interest to society, but one of great difficulty. The usages of nations have varied as to the punishment, but inasmuch as adultery is the corruption of



marriage, which is the foundation of society, adultery has been viewed as a great offence by all nations. The consideration of the penalties which ought to be imposed on the offenders is inseparable from the question of divorce and the provision for the children of the marriage, if any.

ADVENTURE, BILL OF, is a writing signed by a merchant, stating that the property of goods shipped in his name belongs to another, the adventure or chance of which the person so named is to stand, with a covenant from the merchant to account to him for the produce. In commerce, an adventure is defined a speculation in goods sent abroad under the care of a supercargo, to dispose of to the best advantage for the benefit of his employers.

ADVERTISEMENT (from the French *avertissement*, which properly signifies a giving notice, or the announcement, of some fact or facts). In the English, Scotch, and Irish newspapers, and other periodical works, there are annually published nearly two millions of announcements, which, whatever be their peculiar character, are known by the general name Advertisement. The duty on a single advertisement was formerly 3s. 6d. in Great Britain, and 2s. 6d. in Ireland; but by 3 & 4 Wm. IV. c. 23, it was reduced to 1s. 6d. in Great Britain, and 1s. in Ireland. In the year previous to this reduction the total number of newspaper advertisements published in the United Kingdom was 921,943, viz. 787,649 in England, 108,914 in Scotland, and 125,380 in Ireland. The duty amounted to 172,570*l.*, and had been stationary for several years. In 1841 the number of advertisements had increased to 1,778,957, namely, 1,386,625 for England and Wales (653,615 in London, and 733,010 in provincial newspapers); 188,189 in Scotland; and 204,143 in Ireland. The total duty amounted to 128,318*l.*; and it has progressively increased from the period when the reduction took place, so that there is little doubt of its producing, in time, as large a revenue as it did at the higher rate. The circulation of newspapers has nearly doubled since the reduction of the stamp-

duty upon them; and as the number of separate newspapers has not much increased, an advertisement has the chance of being seen by a greater number of readers. The size of newspapers has been doubled in many instances, to allow of the insertion of a greater number of advertisements. The 'Times' newspaper, which has always had the largest number of advertisements, contained 202,972 advertisements in 1842, or nearly one-third of all the advertisements published in London: as many as 1200 advertisements have sometimes appeared in one day's publication, and the average number each day exceeds 700. Since 1836 this newspaper has issued a double sheet; and within the last two years, during the session of Parliament, even an additional sheet has been issued twice or three times a week, in consequence of the demand for increased space for advertisements. Generally speaking, advertisements supply the fund out of which newspapers are supported, as the price at which the newspaper is sold is insufficient to pay the cost of the stamp, the paper, the printing, and the cost of management. In the greater number of advertisements, the former duty of 3s. 6d. constituted a tax of 100 per cent. The lowest price of an advertisement in a London daily newspaper is now 5s., which includes the duty: such advertisement must not exceed five lines. The usual practice is to charge 6d. per line for each line above four; but when the number of lines exceeds about twenty lines, the rate of charge is increased, the longest advertisements being charged at the highest rate. The rate per column for a single advertisement varies from 6*l.* to 12*l.* according to the circulation of the paper in which it is printed. Advertisements from servants wanting places are charged only 4s. each; and one or two papers in the large provincial towns have adopted a plan of charging only 2s. 6d. for short advertisements of a couple of lines, which are sufficient to embrace notices of a great variety of public wants, of a nature similar to those made known by advertisement in the papers of the United States. But here the duty on these short advertisements constitutes a tax of

66 per cent. If the duty were abolished, the minimum price of advertisements would probably be 1s. in all but a few papers. The habit of advertising has, however, been practically discouraged by the former high duty. In our complicated state of society every facility should be given to the only effectual means of informing the public of new improvements, inventions, and other things calculated to promote the public advantage. The yearly number of advertisements in the United States, where no duty on them exists, is said to exceed 10,000,000.

Advertisements relating to the administration of the poor law, such as contracts for supplies, elections of officers, &c., are exempt from duty, as are also those relating to the proceedings under bankruptcies and insolvencies.

A printed copy of every pamphlet or paper (not a newspaper) containing advertisements must be brought to the Stamp-Office to be entered, and the duty thereon to be paid, under a penalty of 20*l*. (§ 21, 6 & 7 Wm. IV. c. 76).

The first English advertisement which can be found, is in the 'Impartial Intelligencer' for 1649, and relates to stolen horses. In the few papers published from the time of the Restoration to the imposition of the Stamp Duty in 1712, the price of a short advertisement appears seldom to have exceeded a shilling, and to have been sometimes as low as sixpence. (Nichols's *Literary Anecdotes*, vol. iv.)

ADVICE, in its legal signification, has reference only to bills of exchange. The propriety of inserting the words "as per advice," depends on the question whether or not the person on whom the bill is drawn is to expect further directions from the drawer. Bills are sometimes made payable "as per advice;" at other times "without further advice;" and generally without any of these words. In the former case the drawer may not, in the latter he may, pay before he has received advice.

*Advice*, in commercial language, means information given by one merchant or banker to another by letter, in which the party to whom it is addressed is informed of the bills or drafts which have been

drawn upon him, with the particulars of date, &c., to whom payable, &c., and where.

ADVOCATE, from the Latin *advocatus*. The origin of advocates in Rome was derived from an early institution, by which every head of a patrician house had a number of dependants, who looked up to him as a protector, and in return owed him certain obligations. This was the relation of patron and client (*patronus, cliens*). As it was one of the principal and most ordinary duties of the patron to explain the law to his client, and to assist him in his suits, the relation was gradually contracted to this extent.

In early periods of the Roman republic the profession of an advocate was held in high estimation. It was then the practice of advocates to plead gratuitously; and those who aspired to honours and offices in the state took this course to gain popularity and distinction. As the ancient institutions were gradually modified, the services of Roman advocates were secured by pay. At first it appears that presents of various kinds were given as voluntary acknowledgments of the gratitude of clients for services rendered. These payments, however, gradually assumed the character of debts, and at length became a kind of stipend periodically payable by clients to those persons who devoted themselves to pleading. At length the Tribune M. Cincius, about B.C. 204, procured a law to be passed, called from him Lex Cincia, prohibiting advocates from taking money or gifts for pleading the causes of their clients. In the time of Augustus, this intended prohibition seems to have become inefficient and obsolete; and a Senatus consultum was then passed by which the Cincian law was revived, and advocates were made liable to a penalty of four times the amount of any fee which they received. Notwithstanding these restrictions, the constant tendency was to recur to a pecuniary remuneration; for in the time of the Emperor Claudius we find a law restraining advocates from taking exorbitant fees, and fixing as a maximum the sum of 10,000 sesterces for each cause pleaded, which would be equivalent to about 80*l*. sterling. (Tacit. *Ann.* xi. 5, 7.)

Though the word Advocate is the term now generally used to express a person conversant with the law who manages a plaintiff's or defendant's case in court, this is not exactly the meaning of the Roman word advocatus. The word Advocatus, as the etymology of the word implies (*advocare*, to call to one's aid), was any person who gave another his aid in any business, as a witness for instance, or otherwise. It was also used in a more restricted sense to signify a person who gave his advice or aid in the management of a cause; but the Advocatus of the republican period was not the modern Advocate. He who made the speech for plaintiff or defendant was termed Orator or Patronus. Ulpian, who wrote in the second century A.D., defines Advocatus to be one who assisted another in the conduct of a suit (*Dig.* 50, tit. 13); under the Empire indeed we find Advocatus sometimes used as synonymous with Orator. As the word Advocatus must not be confounded with Orator, so neither must Advocatus nor Orator be confounded with Jurisconsultus, whose business it was to know the law and to give opinions on cases. The Emperor Hadrian established an Advocatus Fisci, whose functions were to look after the interests of the Fiscus, or the Imperial revenue.

In still later periods these restrictions upon the pecuniary remuneration of advocates, which must always have been liable to evasion, disappeared in practice; and the payment of persons for conducting causes in courts of justice resembled in substance the payment of any other services. In form, however, the fee was merely an honorary consideration (*quidam honorarium*), and was generally prenumerated, or paid into the hands of the advocate before the cause was pleaded. It was a rule that, if once paid, the fee could never be recovered, even though the advocate was prevented by death or accident from pleading the cause: and when an advocate was retained by his client at an annual salary (which was lawful and usual), the whole yearly payment was due from the moment of the retainer, though the advocate died before the expiration of the year. (Heineccius, *Elementa Juris Civilis*, p. 132.) Traces

of this practice exist in all countries into which the Roman law has been introduced; and are also clearly discernible in the rules and forms respecting fees to counsel at the present day in England.

In countries where the Roman law prevails in any degree, the pleaders in courts of justice are still called advocates, but their character and duties vary under different governments. [ADVOCATES, FACULTY OF; and AVOCAT.]

Advocates in English courts are usually termed COUNSEL.

The Lord Advocate, or King's Advocate, is the principal crown lawyer in Scotland. [ADVOCATE, LORD.]

In the middle ages various functionaries bore the title of Advocati.

Advocati Ecclesiarum were persons who were appointed to defend the rights and the property of churches by legal proceedings. They were established under the later Empire, and subsequently it was determined, in a council held by Eugenius II., that bishops, abbots, and churches should have Advocati, or, as they were otherwise called, Defensores, from their duty of defending the rights of the church. These Advocati were laymen, and took the place of the earlier officers of the same kind, called Oeconomi, who were those ecclesiastics to whom was intrusted the care of church property. In course of time the office of Advocatus Ecclesiarum was conferred on powerful nobles, whose protection the church wished to secure. Charlemagne was chosen Advocatus by the Romans, to defend the Church of St. Peter against the Lombard kings of Italy. Pepin is styled, in a document of A.D. 761, King of the Franks and Roman Defender (*Defensor Romanus*). The title of Advocate of St. Peter was given to the Emperor Henry II.; and Frederick I. was called Defender of the Holy Roman Church.

The business of these Advocati was originally to defend the rights of a church or religious body in the courts, but they subsequently became judges, and held courts for the vassals of those religious houses whose Advocati they were. They were paid by a third part of the fines; the other two-thirds went to the church for whom they acted. The Advocatus and

his train, while making their judicial circuit, were entitled to various allowances of food. The advocati had great opportunities of extending their privileges, which they did not neglect, and the records of the middle ages abound in complaints of their rapacity and oppression, which were stopped by the princes' determining the amount to which they were entitled for their services.

But circumstances led to still further changes. The nature of the feudal system rendered it necessary for the abbots and heads of churches to hire the military services of others, as the ecclesiastics could not bear arms themselves, and, in order to gain the services of warlike chiefs, they granted to them lands to hold as fiefs of the church. This practice of enfeoffing advocates with church property was of high antiquity, at least as early as A.D. 652. The advocates did homage for the church lands which they held. The subject of the advocates of churches is treated by Du Cange with great fullness and clearness.

One sense of *Advocatus* remains to be explained, which has reference to the term *Advowson*. *Advocatus* is the Patronus who has the right of presenting a person to the ordinary for a vacant benefice. The Patronus is the founder of a church or other ecclesiastical establishment; he is also called *Advocatus*. The Patronus endowed the church with lands, built it, and gave the ground.

ADVOCATE, LORD, is the name given to the principal public prosecutor in Scotland. He is assisted by a Solicitor-General and some junior counsel, generally four in number, who are termed Advocates depute. He is understood to have the power of appearing as prosecutor in any court in Scotland, where any person can be tried for an offence, or to appear in any action where the Crown is interested; but it is not usual for him to act in the inferior courts, which have their respective public prosecutors, called procurators fiscal, acting under his instructions. The procurator fiscal generally makes the preliminary inquiries as to crimes committed in his district; and transmitting the papers to the Lord Advocate, that officer, or one of his assist-

ants, either directs the case to be prosecuted at his own instance before the superior court, or leaves it to the conduct of the procurator fiscal in the inferior court. The origin of this office is not distinctly known. The prosecution of all offences at the instance of the crown, appears to have gradually arisen out of two separate sources: the one, the prosecution of state offences; the other, an inquiry, for behoof of the crown, into the extent of the feudal forfeitures arising from offences. A public prosecutor is alluded to in statute law so early as the year 1436; and by the Act 1587, c. 77, it is enacted "That the thesaurer and advocate persew slaughters and utheris crimes, although the parties be silent, or wald utherways privily agree." It is now so thoroughly fixed a principle that the Lord Advocate is the prosecutor for the public interest of all offenders, that when a private party prosecutes, it is the practice that he shall obtain the concurrence of the Lord Advocate. It has been maintained that this concurrence is not necessary, and, on the other hand, that when required, the Lord Advocate can be compelled to give it: but these questions have not been authoritatively settled, as in practice the consent is never refused. The Lord Advocate sat in the Scottish Parliament in virtue of his office, as one of the officers of state. He is usually in the commission of the peace: and it is perhaps owing to the circumstance of his thus being a magistrate, that it is said he can issue warrants for the apprehension of accused persons. This is usually called one of the functions of his office, but its existence may be questioned; and the Lord Advocate, like any other party to a cause, never acts as a magistrate in his own person, but obtains such warrants as he may require from the Court of Justiciary. He and his assistants are always members of the ministerial party, and, much to the detriment of the public police business of the country, it is their practice all to resign when there is a change of ministers. When the Duke of Newcastle was in power, the practice of appointing a Secretary of State for Scotland being discontinued, that minister intrusted a great portion of the political business of the

country to the Lord Advocate; and that practice having been continued, the Lord Advocate is virtually secretary of state for Scotland. His duties in this capacity are multifarious, and the extent of his power is not very clearly defined. It is a very general opinion that the administration of criminal justice is injured by this concentration of heterogeneous offices in one man, and that it would be an improvement to throw part of his duties on an under-secretary of state. In 1804, when an inquiry into the conduct of Mr. Hope, as Lord Advocate, was moved for and lost in the House of Commons, that gentleman said, "Cases do occur when nothing but responsibility can enable a Lord Advocate of Scotland firmly and honestly to perform his duty to the public. In the American war, a noble lord, who then filled the situation [Lord Melville], acted on one occasion on this principle, in a way that did him the highest honour. The instance to which I allude was the case of several vessels about to sail from Greenock and Port Patrick to New York and Boston. If these vessels had been permitted to sail, the consequence would have been that a number of British subjects would have been totally lost to this country. What then did the noble lord do? . . .

. . . He incurred a grand responsibility: immediately sent orders to the custom-house officers of the ports from which the vessels were to sail, and had them all embargoed." And several similar instances of the exercise of undefined power were adduced on that occasion. By an old act, the person who gives false information of a crime to the Lord Advocate is responsible to the injured party, but the Lord Advocate himself is not responsible; and it is held that he is not bound to name his informant. He does not, in prosecuting for offences, require the intervention of a grand jury, except in prosecutions for high treason, which are conducted according to the English method.

**ADVOCATES, FACULTY OF.** The Faculty of Advocates in Edinburgh constitute the bar of Scotland. It consists of about 400 members. Only a small proportion, however, of these profess

to be practising lawyers, and it has become a habit for country gentlemen to acquire the title of Advocate, in preference to taking a degree at the Scottish Universities. The Faculty has no charter, but the privileges of its members have been acknowledged in Acts of Parliament and other public documents. They may plead before any court in Scotland where the intervention of counsel is not prohibited by statute; in the House of Lords, and in parliamentary committees. Their claim to act as counsel is generally admitted in the colonial courts; and in those colonies where the civil law is predominant, such as the Cape of Good Hope and the Mauritius, it is usual for those colonists who wish to hold rank as barristers to become members of the Faculty of Advocates. The only credential which it is necessary for a candidate for admission to the Faculty to produce is evidence of his having passed his twentieth year. On making his application, he is remitted to the committee of examiners on the civil law, who examine him on Justinian's Institutes, and require him to translate *ad aperturam* a passage in the Pandects. After the lapse of a year he is examined in Scottish law. He then passes the ordeal of printing and defending Theses on a title of the Pandects after the method formerly followed in the Universities, and still preserved in some of them. The Faculty have a collection of these Theses, commencing with the year 1693. The impugnement is now a mere form. Being admitted by ballot by those members of Faculty who attend the impugnement, the candidate, on taking the oaths, receives an act of admission from the Court of Session. The expense of becoming a member of the Faculty, including stamp duty, subscription to the widows' fund, the cost of printing the Theses, and the subscription to the library, amounts to about 350*l*. The Faculty choose a dean or chairman by an annual vote. The Dean of Faculty and the two crown lawyers, the Lord Advocate and Solicitor-General, are the only persons who take precedence at the Scottish bar, independent of seniority. The Lord Advocate and the Solicitor-General are the only members of the Faculty who wear silk gowns and sit within the bar.

ADVOCATION in the Law of Scotland, is the name of a process by which an action may be carried from an inferior to a superior court before final judgment in the former. Advocations are regulated by the 1 & 2 Vict. c. 86.

ADVOWSON is the right of presenting a fit person to the bishop, to be by him instituted to a certain benefice within the diocese, which has become vacant. The person enjoying this right is called the *patron* (*patronus*, *advocatus*) of the church, and the right is termed, in law Latin, an advowson (*advocatio*), because the patron is bound to advocate or protect the rights of the church, and of the incumbent whom he has presented. [ADVOCATE.]

As this patronage may be the property of laymen, and is subject to alienation, transmission, and most of the changes incidental to other kinds of property, it would be liable to be misused by the intrusion of improper persons into the church, if the law had not provided a check upon abuse by giving to the bishop a power of rejecting the individual presented, for just cause. The ground of his rejection is, however, not purely discretionary, but is examinable at the instance either of the clergyman presented or of the patron, by process in the ecclesiastical and temporal courts.

According to the best authorities, the appointment of the religious instructors of the people within any diocese formerly belonged to the bishop: but when the lord of a manor, or other considerable landowner, was willing to erect a church, and to set apart a sufficient portion of land or tithe for a perpetual endowment, it was the practice for the founder and his heirs to have the right of nominating a person in holy orders to be the officiating minister, as often as a vacancy should occur, while the right of judging of the spiritual and canonical qualification of the nominee was reserved, as before, to the bishop. Thus the patron is properly the founder of a church or other ecclesiastical establishment: he who built the church, gave the ground for it, and endowed it with lands. (Du Cange, *Gloss.*, *Advocatus*, *Patronus*.)

This seems to be the most satisfactory

account of the origin of *advowsons* and *benefices*, and it corresponds with many historical records still extant, of which examples may be seen in Selden's *History of Tithes*. It also explains some circumstances of frequent occurrence in the division of parishes, which might otherwise appear anomalous or unaccountable. Thus the existence of detached portions of parishes, and of extra-parochial precincts, and the variable extent and capricious boundaries of parishes in general, all indicate that they owe their origin rather to accidental and private dotation than to any regular legislative scheme for the ecclesiastical subdivision of the country. Hence, too, it is frequently observable that the boundaries of a parish either coincide with, or have a manifest relation to, manorial limits. The same connexion may, perhaps, have suggested itself to those who have had opportunities of noticing the numerous instances in different parts of England, in which the parochial place of worship is closely contiguous to the ancient mansion of its founder and patron, and within the immediate enclosure of his demesne.

As an illustration of the respect inculcated in early ages to the patron of a church, we find that the canons of the church, permitted him alone to occupy a seat within the chancel or choir, at a time when that part of the building was partitioned off from the nave, and reserved for the exclusive use of the clergy. (Kennett's *Paroch. Antiq. Glossary*, tit. "*Patronus*.")

An advowson which has been immemorially annexed to a manor or to other land, is called an *advowson appendant*, and is transmissible by any conveyance which is sufficient to pass the property in the manor or land itself. It may, however, be detached from the manor, and is then termed an *advowson in gross*, after which it can never be re-annexed so as to become appendant again.

An advowson is in the nature of a temporal property and a spiritual trust. In the former view, it is a subject of lawful transfer by sale, by will, or otherwise, and is available to creditors in satisfaction of the debts of the patron. It may be aliened for ever, or for life, or for a

certain term of years; or the owner may grant one, two, or any number of successive rights of presentation on future vacancies, subject always to certain restrictions imposed by the law, for the prevention of corrupt and simoniacal transactions.

On the other hand, the spiritual trust which is attached to this species of property is guarded and enforced by very jealous provisions. The appointment of a duly qualified incumbent is secured, as far as the law can secure it, by requiring the sanction of the bishop to his admission; and although this sanction is, in fact, very rarely withheld, yet it cannot be doubted that the existence of such a check is essential to the well-being of the church. In order more effectually to guard against the danger of a corrupt presentation, the immediate right to present is absolutely inalienable, as soon as a vacancy has actually occurred; and on a similar principle, a purchase of it during the mortal sickness of the incumbent is equally prohibited.

When the proprietor of an advowson exercises his patronage, three persons are immediately concerned: the proprietor, the clergyman who is presented, and the bishop in whose diocese the living is situate; or (in the language of lawyers) the *patron*, the *clerk*, and the *ordinary*. The presentation is usually a writing addressed to the bishop, alleging that the party presenting is the patron of a church which has become vacant, and requesting the bishop to admit, institute, and induct a certain individual into that church, with all its rights and appurtenances. A period of time, limited to twenty-eight days, is then allowed to the bishop for examining the qualification and competency of the candidate, and at the expiration of that time he is admitted and instituted to the benefice by formal words of institution read to him by the bishop, from an instrument to which the episcopal seal is appended. A mandate is then issued to the archdeacon or other officer to *induct*, i.e. to put the new incumbent into the actual possession of the church and its appurtenant rights; and then, and not before, his title as legal *parson* becomes complete.

It sometimes happens that two of the three characters of patron, clerk, and bishop (or ordinary), are united in one person. Thus the bishop may himself be the patron; in which case presentation is superfluous, and institution alone is necessary. The bishop is then technically said to *collate* the clergyman to the benefice, and the advowson under these circumstances is said to be *collative*.

So the clerk may be the patron, in which case, though he cannot regularly present himself, yet he may pray to be admitted by the bishop; or he may transfer to another the right of presentation before the particular vacancy occurs, and then procure himself to be presented.

Another instance in which the patronage and the parsonage are often found united is in *appropriations*, where, by the concurrence of all parties interested, the advowson, together with the church, its revenues and appurtenances, have in former times been conveyed to some ecclesiastical body, who thus became both the patrons and perpetual incumbents of the living, and by whom the immediate duties of cure are devolved on a *vicar* or a stipendiary *curate*.

There are instances of advowsons the patrons of which have power to appoint an incumbent without any previous resort to the bishop for his aid or approbation. These are called *donative* advowsons, because the patron exercises a direct and unqualified privilege of *giving* his church to a clerk selected by himself. The only check upon the conduct of the incumbent in such cases is the power of the patron to visit, and even to deprive him, when the occasion demands it; and the right still residing in the bishop to proceed against him in the spiritual court for any ecclesiastical misdemeanour. It is the opinion of the most eminent lawyers that donatives had their origin in the king, who has authority to found any church or chapel exempt from the episcopal jurisdiction, and may also, by special licence, enable a subject to do the same.

Sometimes the *nomination* is distinct from the right to present: thus, the owner of an advowson may grant to another the right to nominate a clergyman, whom the grantor and his heirs

shall be thereupon bound to present. Here it is obvious that the person to whom the right of nomination is given is substantially the patron, and the person who presents is merely the instrument of his will. So, where an advowson is under mortgage, the mortgage-creditor is bound to present any person who shall be nominated by the mortgagor.

If, upon the vacancy of a living, no successor, or an insufficient one, shall be presented, it is put under *sequestration* by the bishop, whose care it then becomes to provide for the spiritual wants of the parish by a temporary appointment, and to secure the profits of the benefice, after deducting expenses, until another incumbent shall be duly inducted. After a vacancy of six months, occasioned by the default of the patron, the right to present *lapses* to the bishop himself. On a similar default by him, it devolves to the archbishop, and from him again to the king as paramount patron; the period of six calendar months is allowed to pass in each case before the right is forfeited to the superior. A donative advowson, however, is excepted from the general rule; for there the right never lapses by reason of a continued vacancy, but the patron is compellable to fill it up by the censures of the Ecclesiastical Court.

When the incumbent of a living is promoted to a bishopric, it is thereby vacated, and the king, in virtue of his prerogative, has a right to present to it in lieu of the proprietor of the advowson. This singular claim on the part of the crown appears to have grown up since the Reformation, and was the subject of complaint and discussion down to as late a period as the reign of William and Mary. It is difficult to reconcile it to any rational principle, although it has been urged by way of apology, that the patron has no ground to complain, because the king might, if he pleased, enable the bishop to retain the benefice, notwithstanding his promotion, by the grant of a *commendam*: so that the patron sustains no other injury than what may result from the substitution of one life for another. It is, however, certain that, by successive promotions, the crown may, in fact, deprive the patron of his

right for an indefinite time, and an instance is known to have actually occurred wherein the patron of the parish of St. Andrew in London was prevented, by several such exertions of the royal prerogative, from presenting to his own living more than once in 100 years. (See the arguments in the case of the Vicarage of St. Martin's, reported by Sir B. Shower, vol. i. p. 468.) It was truly observed by the counsel in that case, that the safest course to be adopted by an unconscientious patron, with a view to retain in his own hands the future enjoyment of his right, would be to present a clergyman whose qualities are not likely to recommend him to higher preferment.

The following cases may be selected as best illustrating the peculiar nature of this sort of property.

If a man marries a female patron, and a vacancy happens, he may present in the name of himself and wife.

Joint tenants and tenants in common of an advowson must agree in presenting the same person; and the bishop is not bound to admit on the separate presentation of any one. Co-heiresses may also join in presenting a clergyman; and if they cannot agree in their choice, then they shall present in turn, and the eldest shall have the first turn.

When the patron dies during a vacancy, the right to present devolves to his executors, and not to his heir: but where the patron happens also to be the incumbent, his heir, and not his executor, is entitled to present.

Where the patron is a lunatic, the lord chancellor presents in his stead; and he usually exercises his right in favour of some member of the lunatic's family, where it can with propriety be done.

An infant of the tenderest age may present to a living in his patronage, and his hand may be guided in signing the requisite instrument. In such a case the guardian or other person who dictates the choice or directs the pen is the real patron; but the Court of Chancery would doubtless interfere to prevent any undue practice. (Burn's *Eccles. Law*, tit. *Advowson, Benefice, Donative*; Selden's *History of Tithes*; Gibson's *Coder*, vol. ii.; and *BENEFICE*, under which head



there is a table of the value of livings, and the distribution of ecclesiastical patronage.)

**ADVOWSONS, VALUE OF.**—The following plain rules for estimating the value of advowsons may be of use. The bargains which are usually made with respect to advowsons are, either for the advowson itself, *i.e.* the right of presentation for ever, or for the right of presenting the next incumbent, *i.e.* the next presentation. In both these cases there may be circumstances peculiar to the living itself, which fall under no general rule, but which must be considered and allowed for in valuing the advowson as a property. For example, a curate may be necessary; the parsonage-house may be in a state which will entail expenses on the next incumbent; and so on. Again, the property itself is of a nature more likely to be altered in value by the act of the legislature than the fee-simple of an estate. The following rules, therefore, give the *very highest value* of the advowson, and any purchaser should think twice before he gives as much as is found by them.

To find the value of the perpetual advowson of a living producing 1000*l.* a year, the present incumbent being forty-five years of age, and money making four per cent., we must first find how many years' purchase the incumbent's life is worth, and here we should recommend the use of the government or Carlisle tables, in preference to any other. Taking the latter, we find the annuity on a life of forty-five, at four per cent., to be worth fourteen and one-tenth years' purchase; but at four per cent. any sum to be continued annually for ever is worth twenty-five years' purchase. The difference is ten and nine-tenths years' purchase, or, for 1000*l.* a year, 10,900*l.*, which is the value of the advowson.

In finding the value of the next presentation only, other things remaining the same, the seller will presume that the buyer means to make the best of his bargain by putting in the youngest life that the laws will allow, that is, one aged twenty-four. The value of an annuity on such a life at four per cent., according to the Carlisle tables, is seventeen and

eight-tenths years' purchase. And as we are giving the highest possible value of the advowson, omitting no circumstance which can increase it, we will suppose the next incumbent to come into a year's profits of the living immediately on his taking possession. The rule is this:—Take four per cent. of the value of the present incumbent's life, or  $14 \cdot 1 \times 0 \cdot 04$ , which gives  $\cdot 564$ ; subtract this from 1, which gives  $\cdot 436$ ; divide by 1 increased by the rate per cent., or  $1 \cdot 04$ , which gives  $\cdot 419$ ; add one year's purchase to the presumed value of the next incumbent's life ( $17 \cdot 8$ ), which gives  $18 \cdot 8$ , multiply this by the last result,  $\cdot 419$ , which gives  $18 \cdot 8 \times \cdot 419$ , or  $7 \cdot 88$  nearly—the number of years' purchase which the next presentation is now worth—which, if the living be 1000*l.* a year, is 7880*l.*

For the Carlisle Table of Annuities, see Milne *On Annuities*, vol. ii. p. 595. For the Government Tables, see Mr. Finlaison's *Report to the House of Commons*, ordered to be printed 31 March, 1829, page 58, column 6.

#### ÆTOLIAN CONFEDERATION.

Ætolia, according to the ancient geographers, consisted of two chief divisions, one on the coast, extending from the mouth of the Achelous eastwards along the north shore of the Corinthian gulf as far as its narrow entrance at Antirrhium—the other, called Epiktetos, or the acquired, was the northern and mountainous part. The length of sea-coast, as Strabo incorrectly gives it, from the mouth of the Achelous to Antirrhium, is 210 stadia, or about 21 miles: the same line of coast, according to the best modern charts, is about 42 miles, measuring in straight lines from one projecting point to another. If the great recesses of the sea about Anatolico and Mesolunghi were included, the distance would be much greater. The south-eastern boundary of Ætolia, which separated the province from that of the Locri Ozolæ, was a mountain range named Chalcis, afterwards, in its north-eastern course, taking the name of Corax. The north and extreme north-eastern boundaries of Ætolia were the small territory of Doris, the branches of Pindus, and part of the western line of Ceta; but as

no ancient geographer has given anything like a definite boundary to Ætolia, and as we are still only imperfectly acquainted with the mountains of northern Greece, any further description is impossible. The western boundary was the Achelous.

The history of the Ætoliens, as a nation, is closely connected with that of the Acarnanians, but, like the Acarnanians, they were a people of little importance during the most flourishing periods of the commonwealths of European Greece. After the death of Alexander the Great, B.C. 323, they came into notice by their contests with the Macedonian princes, who allied themselves with the Acarnanians. In the reign of Philip V. of Macedon (which commenced B.C. 220), the Ætoliens, after seeing their chief town, Thermum, plundered by this king, and feeling themselves aggrieved by the loss of all they had seized from the Acarnanians, applied to the consul Valerius Lævinus (B.C. 210). Though this produced no beneficial effects, they formed a second treaty with the Romans (about B.C. 198) after the end of the second Punic war. The immediate object of the Romans was the conquest of Macedonia, but it proved eventually that this fatal alliance of the Ætoliens was the first step that led to the complete subjugation of all Greece by the Romans. A series of sufferings and degradations led the way to the occupation of Ætolia, which was made part of the Roman province of Achæa. Under Roman dominion, the few towns of Ætolia almost disappeared: many of the inhabitants were transplanted to people the city of Nicopolis, which Augustus built at the entrance of the Ambracian gulf, opposite Actium, where he had defeated Antony (B.C. 30). Since the time of the Romans it is probable that the face of this country has undergone a few alterations, or received as few improvements from the hand of man, as the most remote parts of the globe. The Romans themselves under the emperors had not even a road through Acarnania and Ætolia, but followed the coast from Nicopolis to the mouth of the Achelous.

Under the Turkish empire, Ætolia was partly in the province of Livadia; and it

is now comprised within the new kingdom of Greece.

The earliest traditions of Ætolia, properly known by that name, speak of a monarchical form of government under Ætolus and his successors; but this form of government ceased at a period earlier than any to which historical notices extend, and we find the Ætoliens existing in a kind of democracy, at least during the time of their greatest political importance. This period extended from about B.C. 224, to their complete conquest by the Romans, B.C. 168, a period of about 50 years. The Ætolian league at one time comprehended the whole country of Ætolia, part of Acarnania and of South Thessaly, with the Cephallenian isles; and it had besides, close alliances with other places in the Peloponnesus, especially Elis, and even with towns on the Hellespont, and in Asia Minor. This alliance with Elis would tend to confirm the tradition of the early connexion already alluded to. Following, probably, the example of the Achæan league, the different parts of Ætolia formed a federal union, and annually chose a general or president, a master of the horse, a kind of special council called Apokletoi (the select), and a secretary, in the national congress held at Thermum about the autumnal equinox. Such scattered notices as we possess about their history and constitutional forms are found principally in the Greek writer Polybius (books ii. iv. xvii., &c.). Though the Ætolian confederation, such as it was in its earlier times, was anterior to the Achæan union of Dyme, Patræ, &c., yet its more complete organization was most probably an imitation of the Achæan league. A minute account of this confederation would be little more than conjecture.

(Schlosser, *Universalhistorische Uebersicht*, &c., vol. ii. p. l.; Hermann, *Lehrbuch*, &c.; the article *Achæischer Bund*, in the *Staats-Lexicon* of Rotteck and Welcker, contains all the necessary references.)

AFFINITY (from the Latin *adfinitas*) means a relationship by marriage. The husband and wife being legally considered as one person, those who are related to the one by blood are related to the other in

the same degree by *affinity*. This relationship being the result of a lawful marriage, the persons between whom it exists are said to be related *in law*; the father or brother of a man's wife being called his *father* or *brother-in-law*. Almost the only point of view in which affinity is a subject of any importance in the English law is as an impediment to matrimony; persons related by affinity being forbidden to marry within the same degrees as persons related by blood. [MARRIAGE.] It is in accordance with this rule that a man is not permitted by our law after his wife's death to marry her sister, aunt, or niece, those relations being all within the prohibited degrees of *consanguinity*; and therefore, according to the principle just laid down, the prohibition extends to the same relations by *affinity* also. This rule, which excludes from marriage those who are within certain degrees of affinity, is supposed to be founded on the Mosaic law; but the eighteenth chapter of Leviticus, on which the prohibition is founded, is interpreted by some persons as not relating to marriage; and in the case of a deceased wife's sister, the text seems to imply a permission of marriage after the wife's death. The degrees of relationship, both of *consanguinity* and *affinity*, within which marriages are prohibited, are contained in Archbishop Parker's Table, entitled "A Table of Kindred and Affinity, wherein whosoever are related are forbidden in Scripture and our laws to marry together." Parker, of his own authority, ordered this Table to be printed and set up in the churches of his province of Canterbury. The Constitutions and Canons Ecclesiastical, which were made in the reign of James I., confirmed Parker's Table, which thus became part of the marriage law so far as that law is administered by the ecclesiastical courts. Marriages within the prohibited degrees could formerly only be annulled by the ecclesiastical courts during the joint lives of the husband and wife; and consequently the offspring of such marriages, though the marriages were considered incestuous by the ecclesiastical courts, was legitimate unless the marriage was dissolved in the lifetime of both the

parents. The Act 5 & 6 Wm. IV. c. 54, 1835, has declared that all marriages celebrated before the passing of that Act between persons being within the prohibited degrees of affinity shall not be annulled for that cause by any sentence of the ecclesiastical court; but that all marriages which shall hereafter be celebrated between persons within the prohibited degrees of *consanguinity* or *affinity* shall be absolutely null and void to all intents and purposes whatsoever. This act does not define what are the prohibited degrees, and this part of the enactment must be interpreted by a reference to Parker's Table and the Canons if the question arises before courts spiritual; and by statute or judicial decisions if it arises in the civil courts, as it may do in cases of prohibition or of succession. The principal statute is the 25 Hen. VIII. c. 32. An elaborate judgment was pronounced by Chief Justice Vaughan, in the celebrated case of *Hill v. Good* (Vaughan's *Reports*, 302), which affirmed that marriage with a wife's sister is unlawful; and this judgment, together with the doctrines prevailing in all our text-books from Lord Coke down to 1835, seems to establish that such is the law of England.

It is the prevailing opinion that this act renders all persons incapable of contracting a marriage who are within the prohibited degrees; and that the rule of law which makes a foreign marriage valid in England, if celebrated according to the law of the country where it was contracted, merely dispenses with the forms required in an English marriage, and has no reference to the parties between whom the marriage is made. This question has been argued and negatived in the Lords, in the case of Sir Augustus d'Este, who claimed the dukedom of Sussex, on the ground that the statutory prohibition of his father's marriage could apply only to England, and does not invalidate a marriage contracted (as that of the Duke of Sussex was) in strict conformity to the law of the country where it occurred. The recent statute may cause some doubt whether a marriage contracted in England by foreigners within the prohibited degrees of affinity

who could contract a valid marriage in their own country, shall be considered valid in England for every purpose; for instance, whether, in the case of the father's intestacy, the children and the wife could take his personal property in England, if the father was domiciled in England.

There are certain cases of prohibition, such as the prohibition against a man marrying his deceased wife's sister, which are considered by many persons to rest on no good reasons, and much has been urged of late years against some of the prohibitions in cases of affinity comprised in Parker's Table. The arguments in favour of maintaining the prohibitions in several of the cases included within Parker's Table seem to be insufficient, if the matter is viewed solely as a question of policy: and, as already observed, the divine authority of some of the prohibited cases cannot, in the opinion of many persons, be maintained. But opinion and prejudice are strongly opposed to any change in the law on this matter. (*Notes on the Prohibition of Marriage in cases of Collateral Affinity*, by Thomas Coates, London, 1842.)

The general rules on this subject are the same in Scotland as in England. The 5 & 6 Wm. IV. c. 54, does not extend to that part of the country. It is the general dictum of the authorities that a marriage with the sister of a deceased wife is null, but the opinion has been doubted, and there has been no opportunity for trying the question judicially.

In several of the United States marriages within the Levitical degrees, with some exceptions, are made void by statute. In some States it is not lawful for a man to marry his deceased wife's sister: in other States it is lawful. For instance, such a marriage may be contracted in New York, and not in Massachusetts. But such a marriage would be held valid in any state in which it is forbidden, and in all other states, if contracted in a state or country where the prohibition does not exist. (*Kent, Commentaries*, ii.)

The distinction between affinity and consanguinity is derived from the Roman law. The kinsfolk (*cognati*) of the husband and wife became respectively the

Adfines of the wife and husband. We have borrowed the words affinity and consanguinity from the Roman law, but we have no term corresponding to adfines. The Romans did not reckon degrees of adfinitas as they did of consanguinity (*cognato*); but they had terms to express the various kinds of adfinitas, as *socer*, father-in-law; *socrus*, mother-in-law.

AFFIRMATION is the solemn asseveration made by Quakers, Moravians, and Separatists, in cases where an oath is required from others. This indulgence was first introduced by the statute 7 & 8 Wm. III. c. 34, which enacts that the solemn affirmation of Quakers in courts of justice shall have the same effect as an oath taken in the usual form. The provisions of this statute are explained and extended by 8 Geo. I. c. 6, and 22 Geo. II. c. 46, s. 36; but in all these statutes there is a clause expressly restraining Quakers from giving evidence on their affirmation in criminal cases. This exception, which Lord Mansfield called "a strong prejudice in the minds of the great men who introduced the original statute" (*Cowper's Reports*, p. 390), has been entirely removed by a recent enactment (9 Geo. IV. c. 32); and Quakers and Moravians are now entitled to give evidence in all cases, criminal as well as civil, upon their solemn affirmation. By 3 & 4 Wm. IV. c. 82, the people called Separatists are allowed to make affirmation instead of taking an oath. The Act 1 & 2 Vict. c. 77, allows the same privilege to persons who have been at any time Quakers, Moravians, or Separatists, and have ceased to be such, but still entertain conscientious objections to the taking of an oath. [OATH.] A curious question arose during the session of parliament of 1833 respecting the sufficiency of the affirmation of a Quaker, instead of the customary oaths, on his taking his seat in the House of Commons: the subject was referred to a committee, upon whose report the House resolved that the affirmation was admissible.

AGE. The common law of England has fixed certain times in the life of a man and woman at which they become legally capable of doing certain acts and owing certain duties, of which before attaining

this age they were incapable. Thus, at the age of twelve years a man may take the oath of allegiance; at fourteen, which for many purposes is considered the age of discretion, a person of either sex may choose a guardian, and may also, according to ancient authorities, be a witness in courts of justice. As to the capacity to be a witness, the rule is at the present day considerably relaxed, for much younger children are frequently permitted to give evidence, after it has been ascertained by examination that they understand the nature of an oath. A female at the age of twelve years, and a male at the age of fourteen years, could formerly make a will of personal estate; but it was provided by statute (33 & 34 Hen. VIII. c. 5) that no person under the age of twenty-one years should make a will of lands. The act of 1 Vict. c. 26, declares that no will made by any person under the age of twenty-one years is valid. A person may be appointed executor at any age, but he cannot act till he is twenty-one.

With respect to matrimony, a woman may consent to marriage at twelve, and a man at fourteen years of age; though parties under the age of twenty-one years cannot actually marry without the consent of their respective parents or guardians. [MARRIAGE.] The age of twenty-one years is, for most civil purposes, the full age both of a man and woman, at which period they may enter into possession of their real and personal estates, may manage and dispose of them at their discretion, and make contracts and engagements. All persons under the age of twenty-one are legally called Infants. A man cannot be ordained a priest till twenty-four, nor be a bishop till thirty years of age. A man cannot be a member of the House of Commons before he has attained the age of twenty-one. In the Congress of the United States of America, a member of the Senate must not be under thirty, and to be eligible to a seat in the House of Representatives it is necessary to have attained the age of twenty-five. In the French Chamber of Peers a member might take his seat at the age of twenty-five, but he could not vote until he had attained the

age of thirty. A member of the National Assembly must not be under the age of 25. An elector must be 21 years old; and before the Revolution of 1830 no one could vote under thirty. The deputies of the Swedish Diet must be twenty-five. A deputy of the Spanish Cortes must also be twenty-five. Under the new Greek constitution a senator must be at least forty years of age; or he must have filled certain offices in the state.

With respect to criminal offences, the law of England regards the age of fourteen years as the age at which a person is competent to distinguish between right and wrong. Under the age of seven years a child is not in any case responsible by law for an offence committed by him; but above that age, and under the age of fourteen years, if it clearly appears that a child is conscious of the nature and wickedness of the crime he commits, he may be tried and punished for it. A very singular instance is related by Mr. Justice Foster of a boy nine years old, who, under circumstances of malice and premeditation, had killed his companion, and hidden the dead body with much care and cunning, and who was tried for murder, and found guilty. The case was afterwards considered by the twelve judges, who thought that the circumstance of hiding the dead body proved the fact of consciousness of guilt, and therefore a capacity of distinguishing good from evil, inconsistent with the presumption of innocence arising from the tender age of the child; and they unanimously agreed that he was a proper subject for capital punishment. (*Foster's Crown Cases*, p. 72.)

The statute 9 Geo. IV. c. 31, §§ 17, 18, makes it felony, without benefit of clergy, for a man to have carnal knowledge of a female who is under ten years of age; and the carnal knowledge of a female above ten and under twelve is made a misdemeanor punishable by imprisonment and hard labour.

In the Roman system there were three periods of age which had reference to legal capacity: 1, *Infantia*, or the period from birth to the completion of the seventh year; 2, from the termination of

Infantia to the attainment of puberty, when persons were called Puberes; 3, from the attainment of puberty to the twenty-fifth year, during which time males were called Adolescentes, or Minores. From the attainment of the twenty-fifth year they were called Majores. An Infans could do no legal act. A person under the age of puberty could do the necessary legal acts in respect of his property with the sanction (auctoritas) of his tutor, who was the guardian of his property. It was somewhat unsettled what was the age at which a male attained puberty, but the best opinions fixed it at fourteen. A woman attained puberty at the age of twelve. Males who were puberes could manage their property, contract marriage, and make a will. Roman women of all ages were under some legal incapacities, but the incapacities of sex do not belong to the present subject. [WOMAN.] Male persons between the age of puberty and twenty-five were protected to a certain extent in their dealings by a Lex Plætoria, and the rules of the Pretorian Edict, which were founded upon it. Under the Emperor Marcus Aurelius, all persons under twenty-five were required to have a Curator, whose functions and powers were very similar to those of the Tutor up to the age of puberty. (Savigny, *Von dem Schutz der Minderjährigen*, *Zeitschrift für die Geschichtliche Rechtswissenschaft*, x.)

#### AGE OF LIFE. [MORTALITY.]

AGENT (from the French *Agent*, and that from the Latin *Agens*). An agent is a person authorized by another to do acts or make engagements in his name; and the person who so authorizes him is called the principal.

An agent cannot be appointed to bind his principal by deed otherwise than by deed; nor can an agent be appointed by a corporation aggregate (unless it be for certain ordinary and inferior purposes) otherwise than by deed: and for the purpose of making leases and other acts specified in the first, second, and third sections of the Statute of Frauds, the authority of the agent must be in writing. In all other cases no particular form is necessary: in commercial affairs agents are usually commissioned by a letter of

orders, or simply by a retainer; but a verbal appointment is sufficient; and even the mere fact of one person's being employed to do any business whatever for another will create between the parties the relation of principal and agent.

An agent's authority (unless it is an authority coupled with an interest, such as a power of attorney granted as a security for a debt) may, in general, be revoked by the principal at any time. It also ceases upon his death or bankruptcy.

There are many kinds of agents, known by specific names, such as bailiffs, factors, brokers, &c. The particular rights, duties, and liabilities of each of these will be found under their respective heads. The object of this article is to state the general principles of law, which are applicable to all.

In the first place, we shall explain what are the rights and duties with respect to one another, resulting from the relation of principal and agent; and, secondly, what are the rights and duties with respect to third persons, resulting from the relation of principal and agent.

I. First, of the relative rights and duties of principal and agent.

1. The first duty of an agent is to use faithfully, and in its full extent, the authority which has been given him. An agent's authority is said to be limited when he is bound by precise instructions; and unlimited, when he is not so bound. When his authority is limited, an agent is bound to adhere strictly to his instructions. Thus, if instructed to sell, he has no right to barter; nor if instructed to sell at a certain price, is he authorized to take less.

When the agent's authority is not limited by precise instructions, his duty is to act in conformity with what may reasonably be presumed to be the intentions of his employer; and in the absence of all other means of ascertaining what these intentions are, he is to act for the interest of his principal, according to the discretion which may be expected from a prudent man in the management of his own business. Thus, if he is authorized to sell, and no price is limited by his instructions, he must endeavour to obtain the best price for the goods. If there

have been other transactions of the same nature between the parties, it is to be presumed that the principal intends that the same mode of dealing should be pursued, which, in former cases, he had either prescribed or approved.

In mercantile transactions it is a rule of universal application, that, in the absence of other instructions, the principal must be presumed to intend that his agent should follow the common usage of the particular business in which he is employed. This, therefore, is the course which it is the agent's duty to pursue; and he will, in all cases, be justified in so doing, even though, under the particular circumstances, he might have acted otherwise to the greater advantage of his principal. Thus a factor ought to sell for ready money, but if he is employed in a dealing or trade where the usage is to sell upon credit, he will be authorized in selling to a person of good credit, and giving such time as is reasonable and customary.

An authority is always to be so construed as to include all necessary or usual means of executing it with effect. An agent is, therefore, authorized to do all such subordinate acts as are either requisite by law, in order to the due performance of the principal objects of the instructions, or are necessary to effect it in the best and most convenient manner, or are usually incidental to it in the ordinary course of business. Thus it is the duty of an agent employed in the receipt or dispatch of goods to take care that the custom-house duties are paid, and the proper entries made; and he will be authorized in making any advances, as well for such incidental charges as warehouse-room, as for any other expense necessarily incurred for the preservation of the property.

2. The next duty of an agent is to exercise proper diligence and skill. He is required to use, in the concerns of his employer, the same diligence and care which would be expected from a prudent man in the management of his own business; and he is bound, without any particular instructions, to take every precaution ordinarily used for the safety and improvement of property intrusted to

him. He must also possess and exercise such a competent degree of skill and knowledge as may in ordinary cases be adequate to the accomplishment of the service undertaken.

If an agent does an act which is not warranted by his authority, either express or implied; or if he does an act within his authority, but with such gross negligence or unskilfulness that no benefit can accrue from it, the principal may either reject or adopt what he has done. But if he rejects it, he must do so decisively from the first, and give his agent notice thereof within reasonable time; for if he tacitly acquiesce in what has been done, and still more if he in any way act upon it, he will be presumed to have adopted it. Thus, if an agent puts out his employer's money at interest without his authority; or if a factor, employed to purchase, deviates from his instructions in price, quality, or kind; or if he purchases goods which he might at the time have discovered to be unmarketable, the principal may disavow the transaction: but if, in the first cases, he knowingly receives the interest, or, in either of the others, if he deals with the property as his own, he adopts the act of the agent, and relieves him from all responsibility for the consequences.

But if he does not either expressly or impliedly adopt such act, the whole hazard of it lies with the agent, even though he did it in good faith, and for the interest of his employer. Any profit or advantage that may accrue from it he must account for to his principal; and if loss ensues, he is bound to make it good to him. An agent is likewise answerable to his principal for all damage occasioned by his negligence or unskilfulness. This responsibility applies in all cases, not only to the immediate consequences of his misconduct or neglect, but likewise to all such losses as, but for his previous misconduct or neglect, would not have occurred; such, for instance, as the destruction of goods by fire in a place where he had improperly suffered them to remain; but it does not extend to such losses by fire, robbery, or otherwise, as are purely accidental, and happen by no default of his own: and his responsibility

extends to the whole amount of the damage suffered by the principal, either by direct injury occasioned to his own property, or by his being obliged to make reparation to others.

If an agent's negligence is so gross, or his deviation from his authority so great, as to amount to a breach of his contract, which contract may be either a formal agreement, or it may be merely the legal contract implied in the relation of agent and principal, the agent is liable to an action for such breach of duty or of contract, whether any injury has been sustained by it or not; but if no injury has been in fact sustained, the damages will be merely nominal.

3. The third general duty of an agent is to keep a clear and regular account of his dealings on behalf of his principal; to communicate the results from time to time; and to account when called upon, without suppression, concealment or overcharge.

An agent is not in general accountable for money until he has actually received it, unless he has by improper credit, or by other misconduct or neglect, occasioned a delay of payment. But an agent acting under a commission *Del credere*, that is, one who has undertaken to be surety to his principal for the solvency of the persons whom he deals with, is, in their default, accountable for the debt; and in all cases where an agent has actually received money on behalf of his principal, he is bound to take care of it according to the general rules which regulate his conduct; and if any loss is occasioned by the fraud or failure of third persons, he will, unless his conduct be warranted by his instructions, or the usage of trade, be bound to make it good; if a stranger, for instance, calls upon him by a written authority to transfer the money in his hands, and the authority is a forgery, he will be accountable for all that is transferred under it.

The principal is in general entitled not only to the bare amount of what has been received by his agent, but to all the increase which has accrued to the property while in his possession. The agent is, therefore, accountable for the interest, if any has actually been made, upon the

balance in his hands; and likewise for every sort of profit or advantage which he may have derived by dealing or speculating with the effects of his principal.

4. It is also the duty of an agent to apprise his principal, with all convenient expedition, of all material acts done or contracts concluded by him.

5. The conduct of an agent, confidentially intrusted and relied on for counsel and direction—as an attorney, for instance—is liable to a stricter investigation, if he in any way acts improperly. It is also a general principle, that an agent cannot make himself an adverse party to his principal; for instance, if he is employed to sell, he cannot make himself the purchaser: such a transaction is liable to be set aside in a court of equity, unless it be made clearly to appear that the principal gave his consent to it, and that the agent furnished him with all the knowledge which he himself possessed: and in like manner, an agent employed to purchase cannot be himself the seller; if he acts as such, he is accountable to his principal for all the profits he has made by his indirect dealing.

We are now to consider what are the duties of the principal to his agent; or what are the rights of an agent.

1. The first right of an agent is to his commission; that is, the remuneration to be paid to him in return for his services. The amount of commission is sometimes determined by agreement between the parties; sometimes it is regulated by the usage of trade; and in some few cases, as of brokerage for the procuring of loans, &c., the amount of commission is limited by act of parliament.

An agent has no right to commission for doing any act not within his authority, unless it is afterwards adopted by his principal. He may also forfeit his right to commission by misconduct: as, if he keeps no account; if he makes himself an adverse party to his principal; or if, in consequence of his negligence or unskilfulness, no benefit accrues to the principal from the services performed.

2. Besides his commission, an agent is entitled to be reimbursed all such advances made on behalf of his principal,



as are justified by his authority, whether expressed or implied, or subsequently sanctioned by his principal. And cases may sometimes occur of urgent danger, when there are no means of referring for instructions, in which an agent, acting for the best, is justified in making advances without particular directions, and under exigencies not provided for by regular rules of business. Thus if, on account of the lateness of the season, or other good cause, he insures the cargo without orders, he is entitled to charge his principal with the premium, and in such a case even the assent of the principal would be inferred from very slight circumstances. But an agent is not entitled to be reimbursed payments that are merely voluntary and officious; nor expenses occasioned by his own negligence or unskilfulness.

An agent has also, as a further security, a lien upon the property of his principal; that is, a right to retain it in his possession in the nature of a pledge for the satisfaction of his demands. Lien is either particular or general. A particular lien is a right to retain the thing itself in respect of which the claim arises. This right is very extensively admitted in our law, and is possessed by bailees in general, and consequently by all agents in the nature of bailees. [LIEN.]

General lien is a right to retain any property of the principal which may come into the agent's possession in the regular course of business. This, being an extension of the general right, exists where it is created by contract, by the previous dealings of the parties, or by the usage of trade. Factors, packers, where they are in the nature of factors, insurance-brokers, and bankers, have, by usage, a general lien in their respective employments.

This right may in general be exercised in respect of any claim to commission or reimbursement which the agent may have acquired in the due execution of his authority; but it does not extend to demands arising from transactions not within his course of dealing as such agent.

An agent's lien does not attach unless the property is actually in his possession :

a consignee has therefore no lien on goods consigned to him, if the consignor stops them before they come into his hands; nor unless they have come into his possession in the ordinary course of business: he has consequently no lien on property which has been casually left in his office, which has been deposited with him as a pledge for a specific sum, or which he has obtained possession of by fraud or misrepresentation. And if an agent parts with the possession of the property, the lien is in general lost: but by stat. 4 Geo. IV. c. 83 (the factor's act), if a factor pledges the goods or commercial documents of his principal as a security for advances made, with notice that they are not his own; or if, without such notice, he pledges them for a pre-existing debt due from himself, the lien of the factor on such goods or documents is transferred to the person with whom they are pledged; that is to say, in other words, he acquires the same right upon them which the factor, while they remained in his possession, could have enforced against the principal.

The right of lien may be destroyed by the special agreement of the parties; and if the agent enters into a contract with his employer inconsistent with the exercise of the right (as if he stipulates for a particular mode of payment), he must be understood to waive it.

We have hitherto considered only the case of hired or paid agents, between whom and gratuitous agents there exists nearly the same difference with respect to their relative rights and duties as between bailees for hire and gratuitous bailees. (Sir W. Jones, *On the Law of Bailments*.)

The responsibility of a gratuitous agent (the mandatarius of the Roman law) is much less than that of one who is paid for his services. He will in general incur no liability, provided he acts with good faith, and exercises the same care in the business of his employer as he would in his own. But if he is guilty of gross negligence, or if, having competent skill, he fails to exert it, he will be answerable to his employer for the consequences. He has of course no right to commission, but he is entitled to

be reimbursed for any reasonable payments made, or charges incurred in behalf of his employer. (As to the Roman *mandatarius*, see Gaius, iii. 155—162, iv. 83, 84; *Dig.* 17. tit. 1.)

II. It remains to explain the consequences of the relation of principal and agent, as between the parties and third persons: and, first, as between the principal and third persons; and, secondly, as between the agents and third persons.

First, then, as between the principal and third persons: it is a general rule that the act of the agent is to be considered as the act of the principal; it gives the principal the same rights, and imposes on him the same obligations, as if he had done it himself.

A bargain or agreement entered into by an agent is therefore binding upon his principal, whether it tends to his benefit or his disadvantage; and, in order to have this effect, it is not absolutely necessary that it should actually be within the agent's real authority, either express or implied, provided it be within what may most properly be called his *apparent authority*—that is, provided it is such as the person dealing with the agent might under the circumstances reasonably presume to be within his authority.

An authority may be presumed, first, from the principal's having previously authorized or sanctioned dealings of the same nature. Thus, if a person has been in the habit of employing another to do any act,—as, for instance, to draw or indorse bills,—he will be answerable for any subsequent acts of the same nature,—at least, until it is known, or may reasonably be presumed, that the authority which he had given has ceased. An authority may likewise be presumed from the conduct of the principal, with reference to the subject-matter of the transaction in question. For if a person authorizes another to assume the apparent right of engaging in any transactions, the apparent authority must, as far as regards the rights of third persons, be considered as the real authority. Thus, a broker employed to purchase has no authority to sell; and if he does, his employer may (unless the sale was in open market) reclaim the goods so sold, into

whatever hands they may have come. But if the principal has permitted the broker to assume the apparent right of selling the goods, he will be bound by a sale so apparently authorized.

Upon the same principle, when a general agent is employed,—that is, an agent authorized to transact all his employer's business of a particular kind, as to buy and sell certain wares, or to negotiate certain contracts,—he must be presumed to have all the authority usually exercised by agents of the same kind in the ordinary course of their employment: and though the principal may have limited his real authority by express instructions, yet he will not thereby be discharged from obligations incurred in the ordinary course of trade towards persons who have dealt with the agent without any knowledge of such limitation. Thus where an agent purchases goods on credit, the seller may come on the principal for payment: and this right cannot be affected by any private agreement between the principal and agent, by which the agent may have stipulated to be liable to the seller.

Although the agent is, in all these cases, ultimately answerable to his employer for any damage that may follow from his having entered into an engagement not within his authority; yet the principal is, in the first instance, bound to keep an engagement so entered into by his agent upon a reasonable presumption of authority.

But in the case of a special agent (that is, of a person appointed merely to do certain particular acts), as no presumption of authority can arise from usage of trade, so the principal will not be bound by any act not within the real authority of the agent,—and it lies upon those who deal with the agent to ascertain what that authority actually is.

Thus, in order to illustrate more fully the difference in this respect between general and special agents:—If a person employs a stable-keeper, whose general business it is to sell horses, to sell a particular horse for him, and he warrants the horse to be sound, inasmuch as the giving such warranty is within the ordinary course of his employment, the owner

will be bound by such warranty, even though he may have directed expressly that none should be given; but if he employs another person to sell his horse, whose ordinary business it is not to sell horses,—then, although, if he has given no orders to the contrary, the agent will be justified in giving a warranty, as being a thing incidental to the main object of his employment; yet if he has given express orders that no warranty should be given, and the agent gives a warranty in opposition to his orders, he will not be bound by it.

As the agreement made by an agent, so likewise all his dealings in connection with it, provided they are within his real or apparent authority, are as binding on the principal as if they were his own acts. Thus the representations made by an agent, at the time of entering into an agreement (if they constitute a part of such agreement, or are in any way the foundation of or inducement to it), and, in many cases, even the admissions of an agent as to anything directly within the course of his employment, will have the same effect as if such representations or admissions had been made by the principal himself. So also if notice of any fact is given, or if goods are delivered to an agent, it will be considered as notice or delivery to the principal. And in general, payment to an agent has the same effect as if it had been made to the principal, and in such cases the receipt of the agent is the receipt of the principal. But such payment is not valid if it is not warranted by the apparent authority of his agent. Thus, if money is due on a written security, as long as the security remains in the hands of an agent it is to be presumed that he is authorized to receive the money, and payment to him will therefore discharge the debt: but if the agent has not the security in his possession, the debtor pays him at his own risk, and will be liable, in case the agent should not account for it to his principal, to pay it over again.

If the principal gives notice to the buyer not to pay the money to the factor with whom he made the bargain, he will in general not be justified in doing so; but if the factor had a lien upon the

goods for his general balance, he has a right to require the buyer to pay him instead of his principal: and such payment to the factor, notwithstanding any notice given by the principal, will be a discharge of the debt.

A principal is in general liable for all damage occasioned to third persons by the negligence or unskilfulness of his agent when he acts within the scope of his employment; and for any misconduct or fraud committed by him, if it be either at his express command or within the limits of his implied authority.

From this liability, however, it is reasonable that those persons should be exempted who, though they appear in some degree in the character of principals, yet have no power in the appointment of those who act under them. Thus the postmasters-general, and persons at the head of other public offices, have been held not to be liable for the conduct of their inferior officers. On the same principle, the owners and masters of vessels are by statute released from all liability to third persons from the negligence or unskilfulness of the pilots by whom they are navigated into port.

It now remains to state what are the effects of the relation of principal and agent, as between the agent and third persons.

An agent is not in general personally responsible on any contract entered into by him on behalf of his principal: to this rule, however, there are several exceptions.

First. If an agent has so far exceeded his authority that his principal is not bound by his act; as for instance, if an agent without any authority undertakes for his principal to pay a certain sum, or if a special agent warrants goods, contrary to his instructions; and the principal refuses to adopt such undertaking or warranty, the agent alone is liable to the person to whom it was given.

Secondly, an agent is liable when the contract was made with him not as agent. And, therefore, if in any contract made on behalf of his principal, the agent binds himself by his own express undertaking, or if the circumstances of the transaction are such that the credit was originally

given to him and not to the principal (whether such principal were known at the time or not), in either of these cases he will be liable, in the first instance, to the persons with whom he has dealt.

For the same reason, when an agent takes upon himself to act in his own name, and gives no notice of his being employed in behalf of another person—as if a factor delivers goods as his own and conceals his principal—he is to be taken, to all intents, as the principal, and the persons who have dealt with him are entitled to all the same rights against him as if he actually were so. They may, for instance, in an action by the principal on demand arising from such transactions, set off a debt due from the agent himself; which they could not have done, if they had known that he acted only as an agent. And if he afterwards discloses his principal, he is, nevertheless, not discharged from his liability,—those with whom he has dealt may, at their option, come either upon him on his personal contract, or on the principal upon the contract of his agent.

An agent is responsible to third persons for any wrongful acts, whether done by the authority of his principal or not; and in most instances the person injured may seek compensation either from the principal or the agent, at his option.

An agent cannot delegate to another the authority which he has received, so as to create between his employer and that other person the relation of principal and agent; but he may employ other persons under him to perform his engagements, and the original agent is responsible to his principal as well for the conduct of such sub-agents as for his own: but with respect to damage sustained by third persons from the wrongful acts of such sub-agents, the case is different; such damages must be recovered either from the person who in fact did the injury, or from the principal for whom the act was done. The original agent is responsible to third persons only for his own acts, and such as are done at his command.

If an agent who is intrusted with money or valuable security, with written directions to apply the same in any par-

ticular manner, in violation of good faith converts it to his own use;—or if an agent who is intrusted with any chattel, valuable security, or power of attorney for the transfer of stock, either for safe custody or for any special purpose, in violation of good faith, and without authority, sells or pledges, or in any manner converts the same to his own use, he is guilty of a misdemeanor punishable with fourteen years' transportation, or to fine and imprisonment at the discretion of the court. But this does not extend to prevent his disposing of so much of any securities or effects on which he has a lien or demand, as may be requisite for the satisfaction thereof. It is also a misdemeanor, punishable in the same manner, if a factor or agent employed to sell, and intrusted with the goods or the documents relating to them, pledges either the one or the other, as a security for any money borrowed or intended to be borrowed, provided such sum of money is greater than the amount which was at the time due to the agent from the principal, together with any acceptances of the agent on behalf of his principal. (Stat. 7 & 8 Geo. IV. c. 29, s. 49, &c.)

The 5 & 6 Vict. c. 39, entitled "An Act to amend the law relating to advances *bonâ fide* made to agents intrusted with goods," facilitates and gives protection to the common practice of making advances on the security of goods or documents to persons known to have possession thereof as agents only. According to the above act, any agent who is in the possession of goods or of the documents of title to them is to be held in law as the owner, to the effect of giving "validity to any contract or agreement by way of pledge, lien, or security *bonâ fide* made by any person with such agent." The agent may receive back commodities or titles which have been pledged for an advance and may replace them with others, but the lender's lien is not to extend beyond the value of the original deposit. The documents which are held to authorize the agent in disposing of property represented by them, and the transference of which is a sufficient security to the lender, are—"any bill of lading, India warrant, dock-warrant, warehouse-keeper's certificate,

warrant or order for the delivery of goods, or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by indorsement or delivery, the possessor of such document to transfer or receive goods thereby represented." The property represented by any document is held to be conveyed as soon as the document is transferred, although the property is not in the agent's hands; and an advance of money on consignment or indorsation is valid although the consignment or indorsation do not take place at the date of the agreement. A contract by the agent's clerk, or any person acting for him, is binding. An agent granting a fraudulent security is liable to transportation, or such other punishment by fine or imprisonment, or both, as the court may award. There are provisions in the act for enabling the owner to redeem his goods while they remain unsold, on satisfying the person who holds them as a security; and for protecting the principal in the case of the agent's bankruptcy.

AGIO, a term used to denote the difference between the real and nominal value of moneys. The Italian word *Agio* means ease or convenience; but the Italian for *agio*, in the sense in which we use the word, is *aggio*, which is explained to mean "an exchange of money for which the banker has some consideration." The word is used sometimes to express the variations from fixed pars or rates of exchange, but more generally to indicate by per centages the differences in the valuations of moneys. The following is a simple instance of the meaning of the term *agio*, as it is given by Ganilh (*Dictionnaire Analytique d'Economie Politique*):—"Five gold pieces of 20 francs, as they issue from the mint, are worth 100 francs. But if they have been reduced in weight, either by the wear of circulation or by improper means, to the amount of 5 per cent., their real value is only 95 francs, though their nominal value remains the same. The sum of 5 francs, which is necessary to make the real equal to the nominal value, is the *agio*."

The metallic currency of wealthy states generally consists of its own coin exclusively, and it is in the power of the state to prevent the degradation of that coin below the standard, so that no calculations of *agio*, strictly so called, are rendered necessary. In smaller states, the currency seldom entirely consists of their own coin, but is made up of the clipped, worn, and diminished coins of the neighbouring countries with which the inhabitants have dealings. Under these circumstances, banks were, at different times, established by the governments of Venice, Hamburg, Genoa, Amsterdam, &c., which, under the guarantee of the state, should be at all times bound to receive deposits and to make payments, according to some standard value. The money or obligations of these banks, being better than the fluctuating and deteriorated currency of the country, bears a premium equivalent to the deterioration, and this premium is called the *agio* of the bank.

To facilitate his money-dealings, every merchant trading in a place where the deterioration of the currency is thus remedied, must have an account with the bank for the purpose of paying the drafts of his foreign correspondents, which drafts are always stipulated to be paid in bank or standard money. The practice being thus universal, the commercial money-payments of the place are usually managed without the employment of coin, by a simple transfer in the books of the bank from the account of one merchant to that of another. The practical convenience which this plan of making their payments affords to merchants, who would otherwise be obliged, when discharging obligations incurred in standard money, to undergo troublesome and expensive examinations of the various coins in use, causes the money of the bank to bear a small premium above its intrinsic superiority over the money in circulation, so that the *agio* of the bank does not usually form an exact measure of that superiority.

As the current coins of every country have a kind of medium value at which they are generally taken, the term *agio* is also applied to express what must be paid over and above this medium value.

But the kinds of money on which, in the case of exchange, an agio is paid, are not always the more valuable intrinsically, but those which are most in request. For instance, when either gold or paper money is in demand for the purpose of being sent out of the country, those who hold the one or the other may keep it back till an agio is offered them in the current silver money; and a long period may often elapse before a sufficient quantity of the gold coin that has been sent out has come back to enable people to have it without an agio, while it may happen that at a subsequent time an agio must be paid in order to procure current silver money in place of the gold coin. (Rotteck, *Staats-Lexicon*.)

The term agio is also used to signify the rate of premium which is given when a person having a claim which he can legally demand in only one metal, chooses to be paid in another. Thus in France silver is the only legal standard, and payments can be demanded only in silver coin, a circumstance which is found to be so practically inconvenient, that the receiver will frequently pay a small premium in order to obtain gold coin, which is more easily transportable: this premium is called the agio on gold.

There are various meanings of agio in the French language, which are perversions of the proper and original meaning.

AGIOTAGE, in the French language, is a new word, which is used to express speculations on the rise and fall of the public debt of states, or the public funds, as they are often called. The person who speculates on such rise or fall is called *Agoteur*. (Ganilh, *Dict. Analytique d'Economie Politique*.)

AGNATE. [CONSANGUINITY.]

AGRARIAN LAWS (*Agrariæ Leges*). Those enactments were called Agrarian laws by the Romans which related to the public lands (*Ager Publicus*). The objects of these Agrarian laws were various. A law (*lex*) for the establishment of a colony and the assignment of tracts of land to the colonists was an Agrarian law. The laws which regulated the use and enjoyment of the public lands, and gave the ownership of portions of them to the commonalty (*plebes*)

were also Agrarian laws. Those Agrarian laws indeed which assigned small allotments to the plebeians, varying in amount from two jugera to seven jugera (a jugerum is about three-fourths of an English acre), were among the most important; but the Agrarian laws, or those clauses of Agrarian laws which limited the amount of public land which a man could use and enjoy, are usually meant when the term Agrarian laws is now used.

The origin of the Roman public land, or of the greater part of it, was this: Rome had originally a small territory, but by a series of conquests carried on for many centuries she finally obtained the dominion of the whole Italian peninsula. When the Romans conquered an Italian state, they seized a part of the lands of the conquered people; for it was a Roman principle that the conquered people lost everything with the loss of their political independence; and what they enjoyed after the conquest was a gift from the generosity of the conqueror. A state which submitted got better terms than one which made an obstinate resistance. Sometimes a third of their land was taken from the conquered state, and sometimes two-thirds. It is not said how this arrangement was effected; whether each landholder lost a third, or whether an entire third was taken in the lump, and the conquered people were left to equalize the loss among themselves. But there were probably in all parts of Italy large tracts of uncultivated ground which were under pasture, and these tracts would form a part of the Roman share, for we find that pasture land was a considerable portion of the Roman public land. The ravages of war also often left many of the conquered tracts in a desolate condition, and these tracts formed part of the conqueror's share. The lands thus acquired could not always be carefully measured at the time of the conquest, and they were not always immediately sold or assigned to the citizens. The Roman state retained the ownership of such public lands as were not sold or given in allotments, but allowed them to be occupied and enjoyed by any Roman citizen, or, according to some, by the patricians only at first, and in some cases

certainly by the citizens of allied and friendly states, on the payment of a certain rent, which was one-tenth of the produce of arable land and one-fifth of the produce of land planted with the vine, the fig, the olive, and of other trees the produce of which was valuable, as the pine. It does not appear that this occupation was originally regulated by any rules: it is stated that public notice was given that the lands might be occupied on such terms as above mentioned. Nor was the occupation probably limited to one class: either the patricians or the plebeians, either of these two portions of the Roman community, might occupy the lands. The enjoyment of the public land by the plebes is at least mentioned after the date of the Licinian laws. Such an arrangement would certainly be favourable to agriculture. The state would have found it difficult to get purchasers for all its acquisitions; and it would not have been politic to have made a free gift of all those conquered lands which, under proper management, would furnish a revenue to the state. Those who had capital, great or small, could get the use of land without buying it, on the condition of paying a moderate rent, which depended on the produce. The rent may not always have been paid in kind, but still the amount of the rent would be equivalent to a portion of the produce. The state, as already observed, was the owner of the land: the occupier, who was legally entitled the Possessor, had only the use (*usus*). This is the account of Appian (*Civil Wars*, i. 7, &c.). The account of Plutarch (*Tiberius Gracchus*, 8) is in some respects different. Whatever land the Romans took from their neighbours in war, they sold part and the rest they made public and gave to the poor to cultivate, on the payment of a small rent to the treasury (*aerarium*); but as the rich began to offer a higher rent, and ejected the poor, a law was passed which forbade any person to hold more than 500 jugera of (public) land. The law to which he alludes was one of the Licinian laws. (*Camillus*, 39.)

This mode of occupying the land continued for a long period. It is not stated by any authority that there was originally

any limit to the amount which an individual might occupy. In course of time these possessions (*possessiones*), as they were called, though they could not be considered by the possessors as their own, were dealt with as if they were. They made permanent improvements on them, they erected houses and other buildings, they bought and sold possessions like other property, gave them as portions with their daughters, and transmitted them to their children. There is no doubt that a possessor had a good title to his possession against all claimants; and there must have been legal remedies in cases of trespass, intrusion, and other disturbances of possession. In course of time very large tracts had come into the possession of wealthy individuals, and the small occupiers had sold their possessions, and in some cases, it is said, had been ejected, though it is not said how, by a powerful neighbour. This, it is further said, arose in a great degree from the constant demands of the state for the services of her citizens in war. The possessors were often called from their fields to serve in the armies, and if they were too poor to employ labourers in their absence, or if they had no slaves, their farms must have been neglected. The rich stocked their estates with slaves, and refused to employ free labourers, because free men were liable to military service, and slaves were not. The free population of many parts of Italy thus gradually decreased, the possessions of the rich were extended, and most of the labourers were slaves. The Italian allies of Rome, who served in her armies and won her victories, were ground down by poverty, taxes, and military service. They had not even the resources of living by their labour, for the rich would only employ slaves; and though slave labour under ordinary circumstances is not so profitable as free labour, it would be more profitable in a state of society in which the free labourers were liable at all times to be called out to military service. Besides this, the Roman agricultural slave was hard worked, and an unfeeling master might contrive to make a good profit out of him by a few years of bondage: and if he died, his place would readily be

supplied by a new purchase. Such a system of cultivation might be profitable to a few wealthy capitalists, and would ensure a large amount of surplus produce for the market; but the political consequences would be injurious.

The first proposition of an Agrarian law, according to Livy, was that of the consul Spurius Cassius, B.C. 484, a measure, as Livy observes, which was never proposed up to his time (the period of Augustus) without exciting the greatest commotion. The object of this law was to give to the Latins half of the lands which had been taken from the Hernici, and the other half to the plebes. He also proposed to divide among the plebes a portion of the public land, which was possessed by the patricians. The measure of Cassius does not appear to have been carried, and after the expiration of his office, he was tried, condemned, and put to death, on some charge of treasonable designs, and of aspiring to the kingly power. The circumstances of his trial and death were variously reported by various authorities. (Livy, ii. 41.) Dionysius (*Antiq. Rom.* viii. 76) says that the senate stopped the agitation of Cassius by a measure of their own. A *Consultum* was passed to the effect that ten men of consular rank should be appointed to ascertain the boundaries of the public land, and to determine how much should be let and how much distributed among the plebes; it was further provided that if the Isopolite and allied states should henceforth aid the Romans in making any further acquisitions of land, they should have a portion of it. The *Senatus Consultum* being proposed to the popular assembly (*δημος*), whatever that body may here mean, stopped the agitation of Cassius. This statement is precise enough and consistent with all that we know of the history of the Agrarian laws; nor does its historical value seem to be much impaired by the remarks of Niebuhr upon it (*Licinian Rogations*, vol. iii. note 12).

At length, in the year B.C. 375, the tribunes C. Licinius Stolo and L. Sextius brought forward among other measures an Agrarian law, which after much opposition was carried in the year B.C.

365. The measures of Licinius and his colleague are generally spoken of under the name of the Licinian Rogations. The provisions of this law are not very exactly known, but the principal part of them may be collected from Livy (vi. 35), Plutarch (*Tib. Gracchus*, 8), and Appian (*Civil Wars*, i. 8). No person was henceforth to occupy more than five hundred jugera of public land for cultivation or planting; and every citizen was qualified to hold to that amount, at least of public land acquired subsequently to the passing of the law. It was also enacted that every citizen might feed one hundred head of large cattle and five hundred head of small cattle on the public pastures. Any person who exceeded the limits prescribed by the law was liable to be fined by the plebeian ædiles, and to be ejected from the land which he occupied illegally. The rent payable to the state on arable land was a tenth of the produce, and that on lands planted with fruit or other trees was a fifth. This is not mentioned by Appian as a provision of that law which limited the possessions to five hundred jugera, but as an old rule; but if the law of Licinius contained nothing against it, this provision would of course remain in force. A fixed sum was also paid, according to the old rule, for each head of small and large cattle that was kept on the public pastures.

The rent was farmed or sold for a lustum, that is, five years, to the highest bidder. There was another provision mentioned by Appian as part of the law which limited possession to five hundred jugera, which is very singular. To render it more intelligible, the whole passage should be taken together, which is this: "It was enacted that no man should have more of this land (public land) than five hundred jugera, nor feed more than a hundred large and five hundred small cattle; and for these purposes the law required them to have a number of free men, who were to watch what was going on and to inform." \* Niebuhr

\* This passage of Appian is very obscure, but it has certainly been misunderstood by Niebuhr. The Latin version is "*Decretum præterea est, ut ad curanda opera rustica certum numerum*



simply expresses the last enactment thus : "The possessors of the public land are obliged to employ free men as field labourers in a certain proportion to the extent of their possessions." Nothing is said as to any assignment of lands to the plebeians by the law of Stolo, though Niebuhr adds the following as one of the clauses of the law : "Whatever portions of the public land persons may at present possess above five hundred jugera, either in fields or plantations, shall be assigned to all the plebeians in lots of seven jugera as absolute property." He observes in a note : "No historian, it is true, speaks of this assignment, but it must have been made;" and then follow some reasons why it must have been made, part of which are good to show that it was not made. But though Livy does not speak of assignments of land as being made to the Plebes, such assignment is mentioned as one of the objects of his laws in the speech of Licinius (Livy, vi. 39) and of his opponent Appius Claudius (vi. 41).

About two hundred and thirty years after the passing of the Licinian law, the tribune Tiberius Sempronius Gracchus, who was of a plebeian but noble family, brought forward his Agrarian law, B.C. 133. The same complaints were still made as in the time of Licinius: there was general poverty, diminished population, and a great number of servile labourers. Accordingly he proposed that the Licinian law as to the five hundred jugera should be renewed or confirmed, which implies, not perhaps that the law had been repealed, but at least that it had fallen into disuse: but he proposed to allow a man to hold two hundred and fifty jugera, in addition to the five hundred, for each son that he had; though this must have been limited to two sons, as Niebuhr observes, inasmuch as one thousand jugera was the limit which a man was allowed to hold. The land that remained after this settlement was to be

distributed by commissioners among the poor. His proposed law also contained a clause that the poor should not alienate their allotments. This Agrarian law only applied to the Roman public lands in Apulia, Samnium, and other parts of Italy, which were in large masses: it did not affect the public lands which had already been assigned to individuals in ownerships or sold. Nor did it comprise the land of Capua, which had been made public in the war against Hannibal, nor the *Stellatis Ager*: these fertile tracts were reserved as a valuable public property, and were not touched by any Agrarian law before that of C. Julius Cæsar.

The complaints of the possessors were loud against this proposed law; and to the effect which has already been stated. They alleged that it was unjust to disturb them in the possessions which they had so long enjoyed, and on which they had made great improvements. The policy of Gracchus was to encourage population by giving to the poor small allotments, which was indeed the object of such grants as far back as the time of the capture of Veii (Livy, v. 30): he wished to establish a body of small independent landholders. He urged on the possessors the equity of his proposed measure, and the policy of having the country filled with free labourers instead of slaves; and he showed them that they would be indemnified for what they should lose, by receiving, as compensation for their improvements, the ownership of five hundred jugera, and the half of that amount for those who had children. It seems doubtful if the law as finally carried gave any compensation to the persons who were turned out of their possessions, for such part of their possessions as they lost, or for the improvements on it. (Plutarch, *Tib. Gracchus*, x.) Three persons (*triumviri*) were appointed to ascertain what was public land, and to divide it according to the law: Tiberius had himself, his brother Caius, and his father-in-law Appius Claudius appointed to be commissioners, with full power to settle all suits which might arise out of this law. Tiberius Gracchus was murdered in a tumult excited by his opponents at the election.

liberorum aleret quisque, qui ea quae agerentur inspicerent dominoque renunciarent." The word "domino" is an invention of the translator. The words *τὰ γυγνόμενα* may mean all "the produce," as in Thucydides (vi. 54); and this is a more probable interpretation than that given above.

when he was a second time a candidate for the tribuneship (B.C. 133). The law, however, was carried into effect after his death, for the party of the nobility prudently yielded to what they saw could not be resisted. But the difficulties of fully executing the law were great. The possessors of public land neglected to make a return of the lands which they occupied, upon which Fulvius Flaccus, Papirius Carbo, and Caius Gracchus, who were now the commissioners for carrying the law into effect, gave notice that they were ready to receive the statements of any informer; and numerous suits arose. All the private land which was near the boundary of the public land was subjected to a strict investigation as to its original sale and boundaries, though many of the owners could not produce their titles after such a lapse of time. The result of the admeasurement was often to dislodge a man from his well-stocked lands and remove him to a bare spot, from lands in cultivation to land in the rough, to a marsh or to a swamp; for the boundary of the public land after the several acquisitions by conquest had not been accurately ascertained, and the mode of permissive occupation had led to great confusion in boundaries. "The wrong done by the rich," says Appian, "though great, was difficult exactly to estimate; and this measure of Gracchus put everything into confusion, the possessors being moved and transferred from the grounds which they were occupying to others" (*Civil Wars*, i. 18). Such a general dislodgement of the possessors was a violent Revolution. Tiberius Gracchus had also proposed that so much of the inheritance of Attalus III., king of Pergamus, who had bequeathed his property to the Roman State, as consisted of money, should be distributed among those who received allotments of land, in order to supply them with the necessary capital for cultivating it. (Plutarch, *Tiberius Gracchus*, 14.) It is not stated by Plutarch that the measure was carried, though it probably was.

Caius Gracchus, who was tribune B.C. 123, renewed the Agrarian Law of his brother, which it appears had at least

not been fully carried into effect; and he carried measures for the establishment of several colonies, which were to be composed of those citizens who were to receive grants of land. A variety of other measures, some of undoubted value, were passed in his tribunate; but they do not immediately concern the present inquiry. Caius got himself appointed to execute the measures which he carried. But the party of the nobility beat Caius at his own weapons; they offered the plebes more than he did. They procured the tribune Marcus Livius Drusus to propose measures which went far beyond those of Caius Gracchus. Livius accordingly proposed the establishment of twelve colonies, whereas Gracchus had only proposed two. (Plutarch, *Caius Gracchus*, 9.) The law of Gracchus also had required the poor to whom land was assigned to pay a rent to the treasury, which payment was either in the nature of a tax or an acknowledgment that the land still belonged to the state: Drusus relieved them from this payment. Drusus also was prudent enough not to give himself or his kinsmen any appointment under the law for founding the colonies. Such appointments were places of honour at least, and probably of profit too. The downfall of Caius was thus prepared, and, like his brother, he was murdered by the party of the nobility, B.C. 121, when he was a third time a candidate for the tribunate.

Soon after the death of Caius Gracchus, an enactment was passed which repealed that part of the law of the elder Gracchus which forbade those who received assignments of lands from selling them. (Appian, *Civil Wars*, i. 27.) The historian adds, which one might have conjectured without being told, that the rich immediately bought their lands of the poor; "or forced the poor out of their lands on the pretext that they had bought them;" which is not quite intelligible.\* Another law, which Appian attributes to Spurius Borius, enacted that there should be no future grants of lands, that those who had lands should keep them, but pay a rent or tax to the Aerarium, and that this

\* ταῖς δὲ ταῖς is probably corrupt.

money should be distributed among the poor. This measure then contained a poor-law, as we call it, or imposed a tax for their maintenance. This measure, observes Appian, was some relief to the poor by reason of the distribution of money, but it contributed nothing to the increase of population. The main object of Tiberius Gracchus, as already stated, was to encourage procreation by giving small allotments of land, a measure well calculated to effect that object. Appian adds:—"When the law of Gracchus had been in effect repealed by these devices, and it was a very good and excellent law, if it could have been carried into effect, another tribune not long after carried a law which repealed that relating to the payment of the tax or rent; and thus the plebes lost everything at once. In consequence of all this, there was still greater lack than before of citizens, soldiers, income from the (public) land, and distributions."

Various Agrarian laws were passed between the time of the Gracchi and the outbreak of the Marsic war, B.C. 90, of which the law of Spurius Thorius (*lex Thoria*) is assigned by Rudorff to the year of the city 643, or B.C. 111; and this appears to be the third of the laws to which Appian alludes as passed shortly after the death of Caius Gracchus. Cicero also (*Brutus*, 36) alludes to the law of Thorius as a bad measure, which relieved the public land of the tax (*vectigal*). The subject of this *lex* was the public land in Italy south of the rivers Rubico and Maera, or all Italy except Cisalpine Gaul; the public land in the Roman province of Africa, from which country the Romans derived a large supply of grain; the public land in the territory of Corinth; and probably other public land also, for the bronze tablet on which this law is preserved is merely a fragment, and the Agrarian laws of the seventh century of the city appear to have related to all the provinces of the Roman state. One tract, however, was excepted from the *Thoria lex*, the *ager Campanus*, or fertile territory of Capua, which had been declared public land during the war with Hannibal, and which neither the Gracchi nor any other poli-

tician, not even Lucius Sulla, ventured to touch: this land was reserved for a bolder hand. The provisions of the *Thoria lex* are examined by Rudorff in an elaborate essay.

In the year B.C. 91 the tribune Marcus Livius Drusus the younger, the son of the Drusus who had opposed Caius Gracchus, endeavoured to gain the favour of the plebes by the proposal of laws to the same purport as those of the Gracchi, and the favour of the *Socii*, or Italian allies, by proposing to give them the full rights of Roman citizens. "His own words," says Florus (iii. 17), "are extant, in which he declared that he had left nothing for any one else to give, unless a man should choose to divide the mud or the skies." Drusus agitated at the instigation of the nobles, who wished to depress the equestrian body, which had become powerful; but his Agrarian profusion, which was intended to gain the favour of the plebes, affected the interests of the *Socii*, who occupied public land in various parts of Italy, and accordingly they were to be bought over by the grant of the Roman citizenship. Drusus lost his life in the troubles that followed the passing of his Agrarian law, and the *Socii*, whose hopes of the citizenship were balked, broke out in that dangerous insurrection called the Marsic or Social War, which threatened Rome with destruction, and the danger of which was only averted by conceding, by a *Lex Julia*, what the allies demanded (B.C. 90). The laws of Drusus were declared void, after his death, for some informality.

The proposed Agrarian law of the tribune P. Servilius Rullus, in B.C. 63, the year of Cicero's consulship, was the most sweeping Agrarian law ever proposed at Rome. Rullus proposed to appoint ten persons with power to sell everything that belonged to the state, both in Italy and out of Italy, the domains of the kings of Macedonia and Pergamus, lands in Asia, Egypt, the province of Africa, in a word everything; even the territory of Capua was included. The territory of Capua was at that time occupied and cultivated by Roman plebeians (*colitur et possidetur*), an industrious class of good husbandmen and good soldiers: the pro-

posed measure of Rullus would have turned them all out; there was not here, says Cicero (ii. 30), the pretext that the public lands were lying waste and unproductive; they were in fact occupied profitably by the possessors, and profitably to the state, which derived a revenue from the rents. The ten persons (decemviri) were to have full power for five years to sell all that belonged to the State, and to decide without appeal on all cases in which the title of private land should be called in question. With the money thus raised it was proposed to buy lands in Italy on which the poor were to be settled, and the decemviri were to be empowered to found colonies where they pleased. This extravagant proposal was defeated by Cicero, to whose three orations against Rullus we owe our information about this measure.

In the year B.C. 60 the tribune Flavius brought forward an Agrarian law, at the instigation of Pompey, who had just returned from Asia, and wished to distribute lands among his soldiers. Cicero, in a letter to Atticus (i. 19), speaks at some length of this measure, to which he was not entirely opposed, but he proposed to limit it in such a way as to prevent many persons from being disturbed in their property, who, without such precaution, would have been exposed to vexatious inquiries and loss. He says, "One part of the law I made no opposition to, which was this, that land should be bought with the money to arise for the next five years from the new sources of revenue (acquired by Pompey's conquest of Asia). The senate opposed the whole of this Agrarian measure from suspicion that the object was to give Pompey some additional power, for he had shown a great eagerness for the passing of the law. I proposed to confirm all private persons in their possessions; and this I did without offending those who were to be benefited by the law; and I satisfied the people and Pompey, for I wished to do that too, by supporting the measure for buying lands. This measure, if properly carried into effect, seemed to me well adapted to clear the city of the dregs of the populace, and to people the wastes of Italy." A disturbance in Gallia Cisalpina stopped

this measure; but it was reproduced, as amended by Cicero, by C. Julius Cæsar, who was consul in the following year, B.C. 59. The measure was opposed by the senate, on which Cæsar went further than he at first intended, and included the *Stellatis Ager* and Campanian land in his law. This fertile tract was distributed among twenty thousand citizens who had the qualification which the law required, of three children or more. Cicero observes (*Ad Attic.* ii. 16), "That after the distribution of the Campanian lands and the abolition of the customs' duties (*portoria*), there was no revenue left that the State could raise in Italy, except the twentieth which came from the sale and manumission of slaves." After the death of Julius Cæsar, his great nephew Octavianus, at his own cost and without any authority, raised an army from these settlers at Capua and the neighbouring colonies of Casilinum and Calatia, which enabled him to exact from the senate a confirmation of this illegal proceeding, and a commission to prosecute the war against Marcus Antonius. Those who had received lands by the law of the uncle supported the nephew in his ambitious designs, and thus the settlement of the Campanian territory prepared the way for the final abolition of the republic. (Compare Dion. Cassius, xxxviii. 1—7, and xlv. 12.)

The character of the Roman Agrarian laws may be collected from this sketch. They had two objects: one was to limit the amount of Public land which an individual could enjoy; the other was to distribute public land from time to time among the plebes and veteran soldiers. A recent writer, the author of a useful work (*Dureau de la Malle, Economie Politique des Romains*), affirms that the Licinian laws limited private property to five hundred jugera; and he affirms that the law of Tiberius Gracchus was a restoration of the Licinian law in this respect (ii. 280, 282). On this mistake he builds a theory, that the law of Licinius and of Tiberius Gracchus had for their "object to maintain equality of fortunes and to create the legal right of all to attain to office, which is the fundamental basis of democratic government."

His examination of this part of the subject is too superficial to require a formal confutation, which would be out of place here. But another writer already quoted (Rudorff, *Zeitschrift für Geschichtliche Rechtswissenschaft*, x. 28) seems to think also that the Licinian maximum of five hundred jugera applied to private land, and that this maximum of five hundred jugera was applied by Tiberius Gracchus to the Public land. Livy (vi. 35), in speaking of the law of Licinius Stolo, says merely "Nequis plus quingenta jugera agri possideret," but, as Niebuhr observes, the word "possideret" shows the nature of the land without the addition of the word Public. And if any one doubts the meaning of Livy, he may satisfy himself what it is by a comparison of the following passages (ii. 41; vi. 4, 5, 14, 16, 36, 37, 39, 41). The evidence derived from other sources confirms this interpretation of Livy's meaning. That the law of Gracchus merely limited the amount of Public land which a man might occupy, is, so far as we know, now admitted by everybody except Dureau de la Malle; but a passage in Cicero (*Against Rullus*, ii. 5), which he has referred to himself in giving an account of the proposed law of Rullus, is decisive of Cicero's opinion on the matter; not that Cicero's opinion is necessary to show that the laws of Gracchus only affected Public land, but his authority has great weight with some people.

It is however true, as Dureau de la Malle asserts, that the Licinian laws about land were classed among the Sumpuary laws by the Romans. The law of Licinius, though not directly, did in effect limit the amount of capital which an individual could apply to agriculture and the feeding of cattle, and jealousy of the rich was one motive for this enactment. It also imposed on the occupier of public land a number of free men: if they were free labourers, as Niebuhr supposes, we presume that the law fixed their wages. But their business was to act as spies and informers in case of any violation of the law. This is clear from the passage of Appian above referred to. The literal meaning of which is what has been here stated, and there is no authority for giving any other interpreta-

tion to it.\* The law of Tiberius Gracchus forbade the poor who received assignments of land from selling them; a measure evidently framed in accordance with the general character of the enactments of Licinius and Gracchus. The subsequent repeal of this measure is considered by most writers as a device of the nobility to extend their property; but it was a measure as much for the benefit of the owner of an allotment. To give a man a piece of land and forbid him to sell it, would often be a worthless present. The laws of Licinius and Gracchus, then, though they did not forbid the acquisition of private property, prevented any man from employing capital on the public land beyond a certain limit; and as this land formed a large part of land available for cultivation, its direct tendency must have been to discourage agriculture and accumulation of capital. The law of Licinius is generally viewed by modern writers on Roman history as a wise measure; but it will not be so viewed by any man who has sound views of public economy; nor will such a person seek, with Niebuhr, to palliate by certain unintelligible assumptions and statements the iniquity of another of his laws, which deprived the creditor of so much of his principal money as he had already received in the shape of interest. The law by which he gave the plebeians admission to the consulate was in itself a wise measure. Livy's view of all these measures may not be true, but it is at least in accordance with all the facts, and a much better comment on them than any of Livy's modern critics have made. The rich plebeians wished to have the consulate opened to them: the poor cared nothing about the consulate, but they wished to be relieved from debt, they wished to humble the rich, and they wished to have a share of the booty which would arise

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\* The precise meaning of this passage of Appian is uncertain. If the words τὰ γιγνόμενα refer to the produce, their duty was to make a proper return for the purpose of taxation, that is, of the tenths and fifths. But this passage requires further consideration. All that can be safely said at present is that Niebuhr's explanation is not warranted by the words of Appian.

from the law as to the 500 jugera. They would have consented to the law about the land and the debt, without the law about the consulate; but the tribunes told them that they were not to have all the profit of these measures; they must allow the proposers of them to have something, and that was the consulate: they must take all or none. And accordingly they took all.

The other main object of the Agrarian laws of Rome was the distribution of public land among the poor in allotments, probably seldom exceeding seven jugera, about five English acres, and often less. Sometimes allotments of twelve jugera are spoken of. (Cicero against Rullus, ii. 31.) The object of Tiberius Gracchus in this part of his legislation is clearly expressed; it was to encourage men to marry and to procreate children, and to supply the state with soldiers. To a Roman of that age, the regular supply of the army with good soldiers would seem a sound measure of policy; and the furnishing the poorer citizens with inducement enough to procreate children was therefore the duty of a wise legislator. There is no evidence to show what was the effect on agriculture of these allotments; but the ordinary results would be, if the lands were well cultivated, that there might be enough raised for the consumption of a small family; but there would be little surplus for sale or the general supply. These allotments might, however, completely fulfil the purpose of the legislators. War, not peace, was the condition of the Roman state, and the regular demand for soldiers which the war would create, would act precisely like the regular emigration of the young men in some of the New England States: the wars would give employment to the young males, and the constant drain thus caused would be a constant stimulus to procreation. Thus a country from which there is a steady emigration of males never fails to keep up and even to increase its numbers. What would be done with the young females who would be called into existence under this system, it is not easy to conjecture; and in the absence of all evidence, we must be content to remain in ignorance. It is not

stated how these settlers obtained the necessary capital for stocking their farms; but we read in Livy, in a passage already quoted, that on one occasion the plebes were indifferent about the grants of lands, because they had not the means of stocking them; and in another instance we read that the treasure of the last Attalus of Pergamus was to be divided among the poor who had received grants of lands. A gift of a piece of land to a man who has nothing except his labour, would in many cases be a poor present; and to a man not accustomed to agricultural labour—to the dregs of Rome, of whom Cicero speaks, it would be utterly worthless. There is no possible way of explaining this matter about capital, except by supposing that money was borrowed on the security of the lands assigned, and this will furnish one solution of the difficulties as to the origin of the plebeian debt. It is impossible that citizens who had spent most of their time in Rome, or that broken-down soldiers should ever become good agriculturists. What would be the effect even in the United States, if the general government should parcel out large tracts of the public lands, in allotments varying from two to five acres, among the population of New York and Philadelphia, and invite at the same time all the old soldiers in Europe to participate in the gift? The readiness with which the settlers in Campania followed the standard of young Octavianus shows that they were not very strongly attached to their new settlements.

The full examination of this subject, which ought to be examined in connexion with the Roman law of debtor and creditor, and the various enactments for the distribution of grain among the people of Rome, would require an ample volume. The subject is full of interest, for it forms an important part of the history of the Republic from the time of the legislation of Licinius; and it adds one to the many lessons on record of useless and mischievous legislation. It is true that we must make some distinction between the laws of Licinius and the Gracchi, and such as those proposed by Rullus and Flavius: but all these legis

lative measures had the vice either of interfering with things that a state should not interfere with, or the folly of trying to remedy by partial measures those evils which grew out of the organization of the state and the nature of the social system.

The subject of the Roman revenue derived from the Public Land has not been discussed here. This belongs to LAND-TAX, REVENUE, and TAXATION.

The nature of the Agrarian laws, particularly those of Licinius and the Gracchi, has often been misunderstood in modern times; but it is a mistake to suppose that all scholars were equally in error as to this subject. The statement of Freinsheim, in his Supplement to Livy, of the nature of the legislation of the Gracchi, is clear and exact. But Heyne (*Opuscula*, iv. 351) had the merit of putting the matter in a clear light at a time, during the violence of the French revolution, when the nature of the Agrarian laws of Rome was generally misunderstood. Niebuhr, in his Roman History, gave the subject a more complete examination, though he has not escaped error, and his economical views are sometimes absurd. Savigny (*Das Recht des Besizes*, p. 172, 5th ed.) also has greatly contributed to elucidate the nature of possession of the public land, though the main object of his admirable treatise is the Roman law of possession as relates to private property.

AGRICULTURE (from the Latin *Agricultura*). The economical relation of agriculture to other branches of industry is the subject of the following remarks.

The question has sometimes been propounded whether agriculture or manufactures are more useful to a state, or, in other words, whether agriculture or other branches of industry contribute most to the wealth of a state; and whether a state should give more encouragement to agriculture or manufactures. Such questions imply that there is something which essentially distinguishes manufactures from agriculture; and also that a state can and ought to give a direction to industry. Agriculture is the raising of vegetable products from the soil, which

are either consumed in their raw state or used as materials on which labour is employed in order to fashion them to some useful purpose. Manufactures, in the ordinary sense of the term, comprise the various modes of working up the raw products of agriculture and mining. So far there is a distinction between agriculture and manufactures; agriculture is auxiliary and necessary to the other. In the popular notion, the difference in these two processes, the raising of a product from the ground and the working up of the product into another form, constitutes an essential difference between these two branches of industry; and accordingly agriculture and manufactures are often spoken of as two things that stand in opposition or contrast, and they are often viewed as standing in a hostile opposition to one another. But such a distinction between agriculture and manufactures has no real foundation. Those agricultural products which are articles of food—as bread, the chief of all—are essentials, and the industry of every country is directed to obtaining an adequate supply of such articles, either from the produce of such country or by foreign trade. Some of the various kinds of grain which are used as food are the prime and daily articles of demand in all countries. Agricultural articles which are employed as materials out of which other articles are made, such as cotton, are only in demand in those countries where they can be worked up into a new and profitable form. The varieties of soil and climate render some parts of the world more fit to produce grain, and others more suitable for cotton. Ever since the earliest records of history the people of one country have exchanged their products for the products of other countries; and if the matter were simply left to the wants and wishes of the great majority of mankind, no one would trouble himself with the question of the relative superiority of the process by which he produces grain or cotton, and the art by which his cotton is turned into an article of dress in some other country, and sent back to him in that new form to be exchanged for grain or more raw cotton. He might not perceive any essential difference in the process of turning

the earth, committing the seed to it, and reaping the crop at maturity; and the process by which the raw material which he has produced, such as flax or cotton, is submitted to a variety of operations, the whole of which consist only in giving new forms to the material or combining it with other materials. In both cases man moves or causes motion; he changes the relative places of the particles of matter, and that is all. He creates nothing; he only fashions anew. The amount of his manual labour may be greatly reduced by mechanical contrivances, and much more in what are called manufactures than in what is termed agriculture; so that if the amount of the direct labour of hand is to be the measure of the nature of the thing produced, agricultural products are more manufactures than manufactured articles are. Some branches of agriculture, such as wine-making, indeed belong as much to manufactures, in the ordinary sense of that term, as they belong to agriculture. The cultivation of the vine is an essential part of the process of wine-making: but the making of the wine is equally essential. Indeed there are few agricultural products which receive their complete value from what is termed agriculture. Corn must be carried to the market, it must be turned into flour, and the flour must be made into bread, before the corn is in that shape in which it is really useful. Agriculture therefore only does a part towards the process of making bread, though the making of bread is the end for which corn is raised. It is true that in agricultural countries the processes by which many raw products are fashioned to their ultimate purpose, are often carried on by agriculturists and on the land on which the products are raised. But agriculture, as such, only produces the raw matter, corn, flax, grapes, sugar-cane, or cotton. If any agriculturist makes flour, linen, wine, sugar, or cotton-cloth, he does it because he cannot otherwise produce a saleable commodity; but the making of flour or wine or cloth is a manufacturing operation, as the word manufacture is understood.

Besides the manufacture of agricultural products, there is the manufacture of the

products of mines. A mine cannot be classed altogether either with manufactures or agriculture, as these terms are vulgarly understood. Mining produces raw products, which have no value till they are subjected to the various processes by which an infinite variety of useful articles are made out of them. So far mining bears the same relation to certain branches of industry that agriculture does to other branches of industry which it supplies with raw materials. Fisheries produce a supply of food, and are therefore precisely like those branches of agriculture which are directed solely to the production of food.

Now if the question be, which of all these branches of industry adds most to wealth, or, in other words, is most useful to mankind, the answer must be,—they are all equally useful. If it be urged, that some are of more intimate necessity than others, inasmuch as food is essential and therefore its production is the chief branch of industry, it may be replied, that in the present condition of man it is not possible to assert that one branch of industry is more useful than another; each depends on every other. Further, if food is essential to all men in all countries, clothing and houses are equally essential even to the support of life in most countries; and the production of clothing and the building and furnishing of convenient houses comprehend almost every branch of manufacturing industry which now exists. It is an idle question to discuss the relative value of any branches of industry, when we found the comparison upon a classification of them which rests on no real difference, and leave out of the question their aptitude to minister to our wants. One might discuss the relative value of the manufacture of scents and perfumes, and the manufacture of wine and beer; and the foundation of the comparison of value might be the number of persons who use or wish to use the two things, and the effect which the consumption of scents and perfumes on the one hand, and of wine and beer on the other, will have on the consumers and the condition of those who produce them.

But though it is an idle question to discuss the relative value of the variety



of processes included in the term agriculture, and of the infinite variety of processes included in the term manufactures, it is not an idle labour, if we can show that such a discussion is worthless and can lead to no valuable results. It is not an idle labour to attempt to dissipate an error which affects the commercial policy of most nations, and is a deeply rooted error in the minds of the ill instructed, both rich and poor. It was the opinion of a set of persons who have been called the Economistes, that agriculture was the source of all wealth, and therefore the most important branch of industry. This doctrine was founded on the assumption that all the materials that we use are ultimately derived from the earth. This, however, is not true: the products of the sea, of hunting, of mining, are not due to agriculture, even in the sense in which the advocates of this theory understood the term agriculture: and further, a large part of agricultural products receive most of their value from other labour besides agricultural labour. Even corn, the material of bread, as already observed, must undergo a manufacturing process before it becomes bread. But the greatest part of the corn that is produced has little value in the place where it is produced: it obtains its value by being transported to another place where it is wanted, and at a cost which forms a considerable part of its selling price. Lastly, the corn is of no value even when it has thus been removed from one place to another, unless it has been removed to a place where it is wanted by those who are not raising corn, but are producing something to give in exchange for it. The value, then, of the corn depends ultimately on the labour and the wants of those who do not concern themselves about its production.

If those who possess political power were free from all prejudices and all motives of self-interest, or what they suppose to be their interest, there would neither be encouragement nor discouragement given to any branch of industry, and least of all to agriculture. If taxes must be raised, they would be raised in such way as would least interfere with the free exercise of all branches of industry.

The State would provide for defence against foreign aggression, for the administration of justice, and for all such matters of public interest as require its direction and superintendence. To ascertain what these matters may be and how they are to be done, belongs to the subject of government; and the sphere to which the State should limit its activity cannot be exactly defined. But there is one principle which excludes its interference from many matters; which is this. If men are not interfered with they will employ their labour and capital in the way which is most profitable to themselves; and each man knows better how he can employ himself profitably than anybody else can, or any government can, whether such government is of one or many. Agriculture is no exception to this general principle; and there is no reason of public interest why a government should either encourage it or discourage it. In order that the agriculture of a country may attain its utmost development, it is necessary that it be free from all restraint, and that it also be free from the equally injurious influence of special favour or protection.

But no governments have ever let things alone which they ought not to have meddled with; and agriculture has been subject perhaps to more restrictions than any other branch of industry. The interference with agricultural industry lies deeper than at first sight appears. Land is an essential element of a state: it is the basis on which the structure is raised. Now the political constitution of every country is intimately connected with the nature of the landed property; and if we would really trace the history of any nation from the earliest records to the present time, we must begin with the fundamental notions of the law of property in land. In this country for instance it is easily shown that the present mode in which land is held and occupied is the result of those feudal principles which were established, or confirmed and extended by the Norman conquest of England. The various modes in which land is held by the owner and occupied by the cultivator, the modes in which it may be alienated or transmitted by will or by

descent, the burdens to which it is liable either on any change of owner or in any other way, are all important elements in estimating the degree of freedom which agriculture enjoys. The political constitution of a country also materially determines whether the land shall be cultivated in large or in small portions, whether owned by a numerous body or owned by a few; there may also be positive laws which affect the power of acquiring land or disposing of it; and these circumstances materially affect the freedom of agriculture and its condition. The political constitutions of countries, so far as we know them, have not been the result of design. We of the present generation find something transmitted to us which our predecessors have been labouring to amend or deteriorate; they in like manner received it from their predecessors; but the beginning of the series we cannot ascend to. Still every existing generation can do something towards altering that which has been transmitted to it; and every act of legislation which interferes with the mode in which land is acquired or enjoyed materially affects the condition of agriculture. No sufficient reason has ever yet been shown why a man should not, as a general rule, acquire as much land as he can, and dispose of it as he pleases either during his lifetime or at his death. Without discussing the question, whether a man ought to be permitted to give his land to the church or a corporate body, or to determine for generations to come what persons or class of persons shall enjoy his land, it may be laid down as a safe rule that there are limits within which a man's power over his property in land ought to be circumscribed. But such limits should not in any way limit the productive use that can be made of the land; the object of fixing such limits, whatever they may be, is to prevent any large amount of land from being withdrawn permanently out of the market. In a rich country, where great fortunes are acquired by commerce and manufacturing industry, there are always men who wish to invest money in land, and it is for the public interest that there should be opportunities of making such investments.

The tenure of land in any country may

be unfavourable to the improvement of its agriculture. If the object is to encourage agriculture in the only way in which a State can profitably encourage it, all restrictions that arise from the peculiar tenure of land should be removed. But the mode in which land is held may have a political character, and this may be an obstacle to the giving to agriculture that freedom which is necessary for its improvement. It might be considered that in this country it would be politically useful to forbid those large accumulations of land in the hands of individuals, a condition which is accompanied with a diminution in the number of small land-owners. But if it were wise in some points of view to enact a law that should limit the quantity of land that a man may hold, it would be very unwise in other points of view; and such a law would also easily be evaded. The Agrarian laws of Rome only applied to the Public Land, but among other matters they limited the amount of such land that a man could occupy and use. These laws were continually evaded. But besides this, an injury was done to agriculture, that is, the amount of useful produce was diminished by preventing large capitalists from occupying as much of the land as they pleased, subject to the rent which was due to the State. The specious object of the Agrarian laws was to give small cultivators the use or ownership of a portion of the public land, and thus to rear up a body of independent free agriculturists; for the larger farms were cultivated by slaves. Though these laws were not an interference with private property, as the term is properly understood, they interfered with the profitable employment of capital; and they failed in accomplishing their professed object. Some instances are given under the article Allotments of the gradual decrease of small farms in England and their consolidation into large farms, a process which will certainly take place in all countries where there is no positive obstacle, whenever capital is become abundant. [AGRARIAN LAWS.]

The political constitution of a State may therefore encourage or discourage agriculture: and laws may be from time to time enacted which shall have the same

effect. Such laws have sometimes an object purely political, that is to say, a law may be passed which shall have a direct object, not agricultural, and yet it shall indirectly affect agriculture. Any institution or law which in any way either prevents large masses of land from being owned or cultivated by individuals, or which results in a great subdivision of land among owners and occupiers, has an indirect effect on agriculture. Those who cultivate on a small scale cannot enter into the market in competition with those who cultivate on a large scale. [ALLOTMENTS.] A State which consists solely of small landowners must be a feeble political body, and the amount of surplus produce which can be raised will be small. Such a community, if it has not the resources of foreign commerce, will in seasons of scarcity run the risk of famine. The most profitable size of farms depends on a variety of considerations, but whatever it may be, the profitable measure will be practically determined in a country where land can be freely bought or hired, and where capital and labour are abundant. In such a country, and where there is a considerable extent and variety of surface, it is probable that circumstances will produce farms of every size from the smallest unprofitable holdings to the largest farms which can be managed with profit.

Where land is hired by the cultivator, it is an essential condition to good agriculture that there should be farms to hire which permit and require the employment of large capitals. It is also necessary that he who hires the land shall be able to secure the use of it for a period long enough to induce him to cultivate it in the best way, and to make those improvements the fruit of which cannot be reaped all at once. It is a last and equally important condition that he should not be restrained in his mode of cultivation. Small farms, short leases, and conditions which prescribe or limit the mode of cultivation, will infallibly produce bad agriculture.

The productive power of agriculture is not free in any country when the agriculturist is fettered by restrictions upon the sale of his produce; whether the restrictions are imposed by his own State and

exclude him from selling his produce where he can, or whether they are imposed by another State which refuses to receive his surplus produce. In neither case will agriculture attain the development of which it is capable. In France the free intercourse between the different provinces of the kingdom was once impeded by many restrictions, and corn could not be taken even from one province to another. The consequence was that agriculture was in a wretched condition, but it improved rapidly when the restrictions were removed. The history of all countries shows that the interference with the power of disposing of agricultural produce has been unfavourable to agriculture, and consequently injurious to the whole community. Nor is the agriculture of a country free when the land or its products are subject to heavy taxes, direct or indirect. Such taxes raise the price of agricultural produce, and so far diminish the power of persons to buy it; they also increase the amount of capital requisite for cultivating a piece of land, for the payment of the taxes is not always made to depend on the amount of produce raised, or on the time when the produce is by sale converted into money. Payments the amount of which depends on the amount of produce, may either be in the nature of rent, that is, the amount which a cultivator agrees to give to the owner of the land for the use of it: or they may be payments which the land owes to some person or persons not the owner or owners, and quite independent of the payment due to the landowner; to this second class of payments belong Tithes. The cultivator of the Roman Public Land paid the State a tenth of the produce of arable land, and a fifth of the produce of land planted with productive trees. But even this mode of payment is an obstacle to improvement, for the occupier must lay out capital in order to increase the produce of the land; and it will often happen that he pays the tenth of the produce before he has got back his capital, and long before the outlay brings him a profit. The money payment which a man makes to the owner of land for the use of it, is the value of the produce which

remains after all expenses of cultivation, and all costs and charges incident to the cultivation are paid, and the average rate of profit also are returned to the cultivator: at least this is the general mode in which the amount of rent under ordinary circumstances will be determined. It may therefore be as low as nothing. How high it may be depends on various circumstances. [RENT.]

If the agriculture of a country is free from all restrictions, it may in a given time reach the limit of its productive powers. In a country which has a considerable extent of surface and variety of soil, this limit may not be reached for many centuries, because improvement in agriculture is slower than in almost every other branch of industry. The best lands will be first occupied, and carelessly cultivated, as in America; the inferior lands will in course of time be resorted to, and finally the results of modern science will be applied to improve the methods of cultivation. An agricultural country, or a country which produces only raw products, and has no manufactures, will have reached the limit of its productive powers when it has raised from the soil all that can be profitably raised. Whether it will have a large surplus of agricultural produce to dispose of or not, will in a great degree depend on the size of the farms; but in either case the country will have attained the limit of its productive powers under the actual circumstances in which the agriculture is carried on.

But a country which also abounds in manufacturing industry may continue to extend its productive powers far beyond the limits of its agricultural produce. Part of the agricultural produce will be food, but when the producible amount of food has reached its limit, the productive power of manufactures has not reached its limit also; and this makes a real distinction between agriculture and manufactures. Great Britain, for instance, might not be able to raise more food than is sufficient for its actual population, but Great Britain could supply the world with cotton-cloth and hardware. A country of any considerable extent with a fair proportion of good soil will always be to a considerable extent an agricultural coun-

try, for, under equal circumstances of taxation with other countries, it will always be as profitable to cultivate the good lands of such country as to import foreign grain, the price of which is increased by the cost of carriage and contingent expenses. But a time will come in all countries which contain a large population not employed in agriculture, when foreign grain can be imported and sold at a lower price than grain can be produced on poor soils; and if there is no restriction placed on the importation of grain, experience will soon show when it is more profitable to buy what is wanted to supply the deficiency of the home produce than to attempt to raise the whole that is wanted by cultivating poor soils. No country of large extent with a great population could obtain the whole supply of corn by foreign commerce; such an instance is not on record. But a manufacturing country which has up to a certain point produced all the food that is required for its population, will be stopped short in the development of its manufacturing power if from any cause whatever it cannot obtain an increased supply of food. An increased supply of food and an increased supply of raw produce are the two essential conditions, without which the manufacturing industry of a country is ultimately limited by its power to produce food. If the increased supply of food can be obtained from foreign countries, it is a matter of indifference to all who consume the food where it comes from; and the agriculturist himself, as far as he is a consumer of food, is benefited with the rest of the community by the greater abundance of food caused by the foreign supply and by the increased productive powers of the manufacturer. It is not necessary to determine how the increased supply of food will operate on wages or on profits, or on both: it is enough to show, that a time must come when there can be no increase in manufacturing power, if the supply of food is limited to what the country produces; and by an addition to the supply of food an additional power is given towards the production of those articles which have reached their limit because the supply of food cannot be increased.

A country which has already produced from its best and its second-rate soils as much as these soils can produce in the actual state of Agriculture, will begin to import grain from other countries, if there are no restrictions on importation. For capital will be more profitably employed in buying and importing foreign corn from countries where it is abundant than in raising it at great cost from inferior soils at home. It is generally assumed that the country which exports grain will take manufactured articles in exchange, and if there are no restrictions on either side this must be the case; for the manufacturing country does not want the grain more than the agricultural country wants the manufactures. But it might happen that a country which had a very large internal and foreign trade would find it much cheaper to buy annually from grain-growing countries all the corn that is wanted to supply its deficient produce at home, than to attempt to supply the deficiency, or to add to the present stock of food by cultivating very poor soils; and this, even if the grain-growing country should refuse to take a single article of manufactures. The only way, indeed, of actually testing the truth of such a case as this is by experiment; but if commerce were free from all restraint, the importation of grain would become a steady trade, the amount of which would be regulated by the condition of Agriculture in the importing country. If the importing country had brought all the better soils into cultivation, the amount of foreign grain that could profitably be introduced would depend on the productive powers of the exporting country and of the cost of transport. Any improvement in the Agriculture and internal communications of the importing country would tend to check importation: increase of population would tend to increase it. The limit of profitable corn cultivation in the importing country, under its actual circumstances, would be determined by the cost of production in the exporting country, and the cost of transport. The Agriculture of the importing country and of the exporting country would then both be free, so far as restrictions on their commerce are con-

cerned, and the consequence of this competition must be favourable to agriculture in both. The profits of the agriculturists in both countries would be always the same or nearly the same as the average rate of all profits in the two several countries; and the profits of the agriculturist of the importing country would not be affected by the profits of the agriculturist of the exporting country, any more than the profits of any other class of persons would be affected.

The free development then of Agriculture in a country requires the admission of foreign grain. If foreign grain is absolutely excluded, land is made to produce grain which would be better employed in some other way, as in pasturage or planting. Corn thus becomes dear; and agriculture is encouraged or protected, as it is termed, to the injury of the mass of the people, and to its own injury also, for experience shows that those branches of industry receive most improvements which are neither restrained nor encouraged; in other words, industry to be most productive to a nation must have no other direction than what the hope of profit will make individuals give it. If foreign grain is not excluded, but admitted on paying certain dues, the evil is much less than in the case of absolute exclusion, provided the duties are not high, and provided they are uniform. For nothing except a uniform duty can regulate the foreign trade and give it that steadiness which is most particularly the interest of the agriculturist. A uniform duty is equivalent, so far as concerns the foreign trade, to an addition to the productive powers of the soil of the importing country. If trade is free, the exporting country can send its grain whenever the cost of production and the cost of transport do not raise the cost price of such grain above that of the grain raised in the importing country. A miraculous addition to the productive powers of the soil of the importing country or a sudden improvement in its agriculture, without any corresponding change in the exporting country, would at once lower the selling price of grain in the importing country, and diminish the supply from the exporting country. The effect is just the same as

to the supply from the foreign country, if a duty is laid on foreign grain; for that duty will, in certain stages of the agriculture of both countries, just make the difference that prevents the foreign grain from being sold in the importing country at the same price as the native grain. In such case the foreign grain cannot enter the country till the price of the native grain has risen by an amount equal to such fixed duty: the mode in which this rise operates is considered in a subsequent part of this article. But there is this important difference between the supposed cases of miraculous addition to the fertility of the soil or a sudden improvement in agriculture, and the case of a fixed duty, that in either of the first two cases the country has an increased supply of grain, in the other it has not. However, a fixed duty has the advantage of determining the precise terms on which foreign and native corn shall enter into competition; and if the duty is moderate, and is considered necessary for the purposes of revenue, some people argue that a country is not ill administered in which such a duty is raised, though, if it is a manufacturing country rich in capital, such a necessary tax is an obstacle to the full development of its manufacturing powers.

If the duty is variable, the trade cannot be steady, and consequently the price of corn will vary to every degree within very wide limits; an assertion which is not a conjecture, but a fact ascertained by experience. [CORN TRADE.] If there is a duty, either variable or fixed, it gives to poor soils a value which they would not have if the trade in corn were free; for the demand for food calls poor soils into cultivation, and the price of food is regulated by the cost of producing food on the poor lands, and food is consequently dear. The cost of producing food on the rich lands is less, either owing to their superiority, fertility, or the less labour and manure that they require, or owing to both causes. This superiority of rich lands over poor lands gives to them an increased value either as objects of sale or objects of hire: the selling price of such lands is raised, and the letting price is raised; and other lands also acquire a

value that they would not otherwise have.

In a rich country it matters little if a capitalist who wishes to have land gives for it more than its value: such must be the result of the competition for land when the amount is limited and the desire and the power to purchase are constantly increasing. But the effect of a tax on foreign grain in a manufacturing country, when all the best soils are under cultivation, is directly to increase the value of land and to add to the income of the landholder by making land capable of profitable production and of bearing a rent, which without the tax could not be profitably cultivated or give a rent to the owner. The price at which the cultivator must sell his grain in order to continue to cultivate includes his profit and the owner's rent; and the price is paid by him who consumes the grain.

It remains to consider the effect of taxation on the exporting and importing countries. If both are free from taxation, or if the taxation is equal in both, or nearly equal, no nation is well administered which does not allow the importation of grain to be as free as is consistent with raising the necessary amount of revenue. It is not, however, hereby admitted that a tax on the importation of foreign grain is like any other tax, for such a tax is doubly injurious; first in raising the price of food, secondly in impeding the full development of all branches of industry, agriculture included. But if the exporting and importing countries are unequally taxed, it might be said that the agriculturists cannot enter into fair competition, if we suppose their facilities for production are the same; for if the importing country is more highly taxed, the cost of producing grain is thereby increased, and the exporting country has an advantage over the importing country to the amount of the difference in taxation in the two countries. But agriculture is not the only branch of industry that is taxed in a highly taxed country: all other branches of industry are also highly taxed. There is nearly always a duty on all raw produce that is introduced into it for the purpose of supplying the manufactures, as

well as a duty on grain; other taxes also affect directly and indirectly the cost of other manufactured articles. Now as taxes must by the supposition be raised in such a country, the question is in what manner can they be raised with least injury to the general productive power of the nation? If a heavy tax is laid on any raw produce which is required in the country, whether it be corn which is required for bread, or cotton, or other raw articles which are required to supply the manufactories, the productive industry of the country will be checked. If a manufacturing country is in such a condition that it does import foreign grain to some amount, notwithstanding heavy duties upon it, this is a sure indication that the importing country, in the present condition of its agriculture, has passed the limit of production which is profitable to the community. In like manner, if foreign manufactured articles of the same kind with those manufactured in this country should be imported to a considerable amount, notwithstanding the payment of heavy duties, it would at least be a clear indication that these branches of domestic industry could not supply the demand; and it might be that such branches of industry were wholly unprofitable to the community.

The operation of a tax on articles imported into a country seems to be this. The articles may either be articles of a kind which are not produced in the importing country, or which are produced there. If a tax or duty is laid upon articles not produced in the importing country, the direct effect is to raise the price of such articles and to diminish the consumption of them. The indirect effect is to diminish the demand of the exporting country for the goods which it receives from the importing country. If a tax or duty is laid upon articles imported from abroad, which are also produced in the importing country, the effect is to raise the price of all such articles, both those imported and those produced at home; and in this manner:—The producer does not immediately supply the public. Between the producer and the buyer there are the wholesale dealer and the retail dealer. The wholesale dealer

regulates his purchases by the demand which he expects; and if he buys the foreign article, he pays for it the price which the importer demands and the duty which the state demands. The whole mass of articles in the merchant's hands, foreign and native, must now be viewed as the produce of the importing country. Any tax which the state may have raised, directly or indirectly, on the native produce, raises its price; and the tax which it imposes on the imported article raises the price of that article and also the price of the native product. The average price, therefore, at which the merchant can furnish the articles of foreign and domestic produce, is raised; and the consumer must pay this price. The state derives no benefit from the tax or duty on the imported article beyond the bare amount of the tax; it may even be injured in other ways by the tax which the consumer is thus made to pay, for he could get the article cheaper if there were no tax, and his means of purchasing other things and paying other taxes are so far diminished. The effect on the producer of the domestic article, which comes into the market in competition with the foreign article, appears to be this. The fact of the foreign article being introduced and sold to any considerable amount while there is a domestic article, shows either that the foreign article is wanted to supply the deficiency of the home production, or that it is preferred to it. In either case the producer of the domestic article can ask a higher price for it than he could if there were no duty on the imported article. The duty, therefore, gives something to the native producer, which he would not be able to get if there were no duty. This explanation applies to all articles of native produce which are not subject to an excise duty, if there are any such; and, at least, it applies to grain. Now the additional price which the producer of grain is enabled to get because there is an import duty on foreign grain, does not ultimately go into his pocket. It goes to the owner of the land, whoever he may be, whether the occupier or another. For there is a competition among farmers for land to occupy; and they will offer

rent up to that amount which will leave them the usual rate of profit. And if a man farms his own land, he will equally have the advantage of the tax; for he can either profitably farm his land when there is no duty on imported grain, or the duty on imported grain enables him to cultivate land which otherwise he could not cultivate, because the duty raises the price. The state raises a tax on the imported corn, which the consumer pays; and this tax enables the producer of grain to demand of the consumer another sum of money, which to the consumer is just the same as a tax. All duties, therefore, on articles imported into a country, which are also the products of that country, and are not subject to an internal duty, are of the class called protection-duties, whatever their amount may be. It is not the object of this article to discuss how far such protection may be equitably given to any class of producers or proprietors in a highly-taxed country. It is sufficient to show that all persons as consumers are injured by the tax, and that the only persons who receive any benefit from it are the owners of land. If the land is not so highly taxed in those countries in which there is a duty on imported grain as in other countries, the injustice of such a tax is the more flagrant.

There is another mode of viewing the operation of a fixed duty upon corn (*Economist Newspaper*, Dec. 5, 1843). It is urged by those who maintain that such a duty cannot be other than a protective duty, that no supply of foreign corn can be obtained in the importing country until the price of corn in such country has risen high enough to pay the price of corn in the exporting country, with all the costs of transport, and the fixed duty also. It is further maintained, that the price of *all* the corn in the importing country must be so raised before foreign corn will come in; and, consequently, that in any season when there is a deficiency of corn in the importing country, it is not merely the duty on the foreign grain imported that must be paid by the consumer, but he will have to pay an amount equal to the fixed duty on all the corn that is raised in the importing country for the con-

sumption of a given period, for instance, one year. Thus, if the consumption is 20,000,000 quarters, and the deficiency is 2,000,000 quarters, a fixed duty of 5s. per quarter on the 2,000,000 quarters will cause a rise of 5s. in the quarter on the 18,000,000 quarters also. Accordingly the state will get the duty on the 2,000,000 quarters, which the consumer will pay, and somebody else will get the 5s. per quarter on the 18,000,000 quarters, which the consumer also will have to pay. The truth of this proposition may be questioned. The sum which the consumer will have to pay will certainly be more than the duty on the 2,000,000 quarters, but perhaps somewhat less than the 5s. per quarter on the remaining 18,000,000 quarters. For something must be allowed for the fact that all the 18,000,000 are not in the market for sale at once. Under a fixed duty, some of the 2,000,000 quarters of imported corn would be sold when the market price has risen to (say) 47s. the quarter; and an advance of a shilling or two in the price will induce other holders to sell their corn; but all holders may not have done so. The market price may then turn, and others will dispose of their warehoused grain while the market is falling. The home market may then become depressed for a considerable period; and during this period it may be so low as to render it unprofitable to import foreign corn, even at a duty of two or three shillings. In this case then the consumers are not paying 5s. per quarter higher than they would have done if the trade were free. Something also must be allowed for the disposition of merchants to speculate; and both they and the producers are liable to be acted upon by the apprehension of falling markets, when, as sometimes happens, a real panic takes place, and prices are unnaturally depressed. We should be disposed, therefore, to qualify the assertion of the '*Economist*' by the conclusion that, in an importing country, with a fixed duty of 5s., the average price of corn, in a series of years, will be somewhere about 5s. a quarter higher than it would have been if the trade had been free; and perhaps this is all which the writer intended strictly to contend



for. It may perchance turn out that the consumer will have to pay more than 5s. per quarter on the 18,000,000 quarters; but it seems hardly safe to assert that he will have to pay exactly 5s., neither less nor more.

A chimerical difficulty is sometimes raised of this kind. If a country does not produce all the grain that it requires, or if it is dependent for any considerable amount on foreign trade, it may suffer from scarcity in some seasons, and in time of war might be in danger of famine. As to the scarcity, experience shows that no dependence can be placed on a regular foreign supply, unless there is a regular trade in corn, that is, a trade into which a man can enter as he would into any other well regulated trade. If a scarcity should ever happen in the importing country, it will be remedied by the stores of grain on hand that are supplied by a steady trade. If the trade is unsteady and uncertain, the scarcity may be supplied or it may not: but it must be supplied at a higher cost, and sometimes it may be difficult to get a supply at all. Rome, both under the republic and the empire, was in part supplied with foreign grain, but the supply was uncertain, for it was not all furnished in the way of regular trade, but sometimes called for as a forced contribution, sometimes accepted as a gift, and it was often purchased by the state, for the purpose of distribution among the poor, either gratis or at a low price. All Italy imported grain largely under the early emperors. The scarcity with which Rome was sometimes threatened was not owing to the grain coming from foreign parts, but to the fact that there was not a steady trade founded on a regular demand by a body of persons able to pay for it. This subject requires further explanation. [CORN TRADE.] If a government shall regulate or attempt to regulate the foreign trade by scales of duties varying according to any law that the wisdom of a legislature may select, the result will be the same, great irregularity in price and sometimes scarcity. It makes little difference whether the state imports directly or regulates the importation of its subjects by a capricious

rule. The direct importation of the state, if well managed, would obviously be the safer plan of the two. What is here said of the Roman system applies only to the importation of foreign grain into the city of Rome. The necessity which existed for the importation is a question that can only be discussed with the question of cultivation in ancient Italy, and the gratuitous distributions of grain at Rome. Dureau de la Malle has some valuable remarks on this subject (*Economie Politique des Romains*); but we do not assent to all his conclusions.

The fear that war might shut out the supplies of grain which are brought into a country under a regular corn trade cannot enter into the minds of those who view the question without prejudice. War does not and cannot destroy all trade; it may impede it and render it difficult, but trade has existed in all wars. The supposition that a rich manufacturing country which abounds in all the useful products of industry cannot under any circumstances buy corn out of its superfluity, is a proposition which should be proved, not confuted. It belongs to those who maintain this proposition to give reasonable grounds for its truth.

For some remarks in this article the writer is indebted to Ganilh, *Dictionnaire d'Economie Politique*, art. *Agriculture*.

**AGRICULTURE, INSTITUTIONS AND SOCIETIES FOR THE PROMOTION OF.** The effect of legislative enactments which have for their object the advantage of agriculture are treated of under the heads **AGRICULTURE** and **BOUNTY**. Societies for the "Protection" of Agriculture have nothing to do with Agriculture as a science; but the improvement of every branch of rural economy has been largely promoted by societies of a different kind; and those which have been, or are at present, most active in this way, may here be briefly noticed.

The Board of Agriculture, established chiefly through the exertions of Sir John Sinclair, and incorporated in 1793, was a private association of the promoters of agricultural improvement; but as it was assisted annually by a parliamentary grant, it was regarded by the country as in some sort a semi-official institution. One of its

first proceedings was to commence a survey of all the English counties on a uniform plan, which brought out, for the information of the class most interested in adopting them, improved practices, originating in individual enterprise or intelligence, and which were confined to a particular district. The 'Surveys' are many of them imperfectly executed, but they were useful at the time, in developing more rapidly the agricultural resources of the country. During the years of scarcity at the end of the last and beginning of the present century, the Board of Agriculture took upon itself to suggest and, as far as possible, provide remedies for the dearth—by collecting information and making reports to the government on the state of the crops. The statistics which the Board collected were also at times made use of by the minister, or at least were believed to be so, in connection with his schemes of taxation. The Board encouraged experiments and improvements in agriculture by prizes; and the influence which it possessed over the provincial agricultural societies excited and combined the efforts of all in one direction. The Board of Agriculture was dissolved in 1816. The Smithfield Cattle Club, which has been in existence half a century, and some of the provincial agricultural societies, especially the Bath and West of England Society, which commenced the publication of its 'Transactions' nearly seventy years ago, have been very useful auxiliaries, if not promoters of agricultural improvement. Until within the last few years, the exertions of Agricultural Societies have been too exclusively devoted to the improvement of stock.

With the establishment of the 'Royal Agricultural Society of England' a new era commenced in the history of institutions for the improvement of English agriculture. This Society, when it was established, in May, 1838, consisted of 466 members. At the first anniversary, in May, 1839, the number of members had increased to 1104; in May, 1840, there were 2569 members; in December of the same year, 4262; in December, 1841, 5382; in May, 1842, 5834; and by the following May, 1843, the number had

been increased by the election of 1436 new members. At the sixth anniversary of the Society, in May, 1844, the number of members was 6927, of whom 274 had been elected in the preceding three and a half months; and there had previously been struck off the list 249 names of members who were either dead or had not paid their subscriptions. The number of life-governors (who pay on admission the sum of 50*l.*) was 95 in May, 1844; and there were 214 annual governors, who pay 5*l.* yearly; of life members, who pay 10*l.* on admission, there were 442; and of annual members, who pay 1*l.* yearly, there were 6161. At the above date, the funded property of the Society amounted to 7700*l.*, and the current cash balance to 2000*l.* On the 26th of March, 1840, the Society received a charter of incorporation, on which it assumed the designation of the 'Royal Agricultural Society for England.' By the 22nd rule of the Society, "No question shall be discussed at any of its meetings of a political tendency, or which shall refer to any matter to be brought forward, or pending, in either of the Houses of Parliament;" and this rule is made permanent by the charter of incorporation. The objects of the Society, as set forth in the charter of incorporation, are: 1. To embody such information contained in agricultural publications and in other scientific works as has been proved by practical experience to be useful to the cultivators of the soil. 2. To correspond with agricultural, horticultural, and other scientific societies, both at home and abroad, and to select from such correspondence all information which, according to the opinion of the Society, may be likely to lead to practical benefit in the cultivation of the soil. 3. To pay to any occupier of land, or other person, who shall undertake, at the request of the Society, to ascertain by any experiment how far such information leads to useful results in practice, a remuneration for any loss that he may incur by so doing. 4. To encourage men of science in their attention to the improvement of agricultural implements, the construction of farm-buildings and cottages, the application of chemistry to the general purposes of

agriculture, the destruction of insects injurious to vegetable life, and the eradication of weeds. 5. To promote the discovery of new varieties of grain, and other vegetables, useful to man, or for the food of domestic animals. 6. To collect information with regard to the management of woods, plantations, and fences, and on every other subject connected with rural improvement. 7. To take measures for the improvement of the education of those who depend upon the cultivation of the soil for their support. 8. To take measures for improving the veterinary art, as applied to cattle, sheep, and pigs. 9. At the meetings of the Society in the country, by the distribution of prizes, and by other means, to encourage the best mode of farm cultivation and the breed of live stock. 10. To promote the comfort and welfare of labourers, and to encourage the improved management of their cottages and gardens.

The Society has already directed its attention to nearly all the objects above mentioned. The country meetings of the Society, which take place annually in July, have perhaps been more serviceable in stimulating agricultural improvement than any other of the Society's operations, by concentrating the attention of the Society upon each part of the country in succession, and by exciting the attention of each district to the objects which the Society is intended to promote. England and Wales are divided into nine great districts, and a place of meeting in each is fixed upon about a year beforehand. In 1839, the first meeting was held at Oxford; and others have been successively held at Cambridge, Liverpool, Bristol, and Derby. The meeting for 1844 was held at Southampton; that for 1845 at Shrewsbury; in 1846, in some town in the Northern District; and in 1847 the circuit was completed by the meeting being held in the South Wales district. The value of the prizes distributed in 1839, at Oxford, amounted to 790*l.*; and at the Southampton meeting, in 1844, their value will exceed 1400*l.* The show of agricultural implements at Derby comprised 700 different articles, and the aggregate value of implements, according to the selling price of each,

declared by the makers, was about 7400*l.* There can be no doubt that the mechanics of agriculture have made great progress since the establishment of the Society. The opportunity of contrasting and estimating the utility of various implements used for similar purposes in different districts or in different soils, cannot fail to extend improvement from one district to another. It has been said that even down to the present time the north and west of England have little more acquaintance with the practices of each other than two distinct nations might be supposed to possess; and one of the principal results effected by such institutions as the Royal Agricultural Society is to introduce the best practices of husbandry from the districts where agriculture is in its most improved state into those where it is most backward. Attached to the Society's house there is a reading-room, and a library, to which has recently been added by purchase the books forming the library of the late Board of Agriculture. As a means of diffusing information on agricultural subjects, the publication of the 'Journal' of the Society was commenced in April, 1839, and it has at present a circulation of nearly 10,000. The prize essays and all other communications intended for publication in the 'Journal' are referred to the Journal Committee, who decide upon the arrangements of the work. The 'Journal,' contains besides very valuable contributions of a practical as well as scientific character. Prizes have already been awarded for essays on the agriculture of Norfolk, Essex, and Wiltshire; and the agriculture of Notts, Cornwall, and Kent, will be the subject of essays to be sent in by March, 1845.

The success of the Royal Agricultural Society has revived the spirit of existing associations, or led to the formation of new ones. Perhaps in no department of industry or science does there exist so general a spirit of improvement at the present time as in the kindred branches of agriculture and horticulture. Some of the provincial agricultural societies are on a scale which a few years ago could scarcely have been anticipated of a central and metropolitan society.

The Yorkshire Agricultural Society holds its annual show in the different towns of that county in rotation, a plan which is very successful in rendering them attractive. Farmers' clubs have also recently become more numerous. They are eminently practical; but the local results which they collect and discuss may become applicable to other parts of the country placed under similar circumstances of aspect, soil, and situation. It would stimulate the exertions of these clubs, if a department of the 'Journal of the Royal Agricultural Society' were reserved for some of the best papers read at their meetings. The annual report of every farmers' club should be transmitted to the secretary of the Royal Agricultural Society; and the title at least of all papers read at the meetings during the year should be given in the 'Journal.'

The agriculture of Scotland has been largely indebted to the societies which have been established at different periods for its improvement. A 'Society of Improvers in the Knowledge of Agriculture in Scotland' was established in 1723, and some of its Transactions were published. The society becoming extinct was succeeded by another in 1755; and the society which now stands in the same relation to Scotland as the Royal Agricultural Society to England was established in 1784. It is entitled the 'Highland and Agricultural Society of Scotland.' The constitution and proceedings of the society are as nearly as possible similar to the English society. The society publishes quarterly a very excellent Journal of its Transactions, which has at present a circulation of 2300. The Agricultural Museum at Edinburgh was assisted in 1844 by a parliamentary grant of 5000*l*.

In 1840 the 'Royal Agricultural Improvement Society of Ireland' was established on the plan of the Royal Agricultural Society of England; and in May, 1844, the number of subscribers was 581. The society already possesses funded property to the amount of 4859*l*. Since its establishment great progress has been made in the formation of local societies in communication with the central society, which is the best means of ensuring the support and co-operation of the agricul-

tural class in every part of the country. In 1841 there were only twenty-three of these bodies in existence, and at the half-yearly meeting in May, 1844, it was stated that the number was not less than one hundred. A very judicious arrangement has been made relative to the prizes distributed at the local meetings, which are now given for operations in husbandry only, the premiums for stock being furnished by the local association. The society is establishing an agricultural museum in Dublin for the reception of implements of husbandry, seeds, grasses, &c.; it circulates practical information connected with husbandry by means of cheap publications; and one of its objects is the organization of an agricultural college.

In England there are no institutions of a public nature which combine scientific with practical instruction in agriculture. The advantage of establishing such an institution was suggested by the poet Cowley; and in 1799 Marshall published 'Proposals for a Royal Institute or College of Agriculture and other branches of Rural Economy.' There is the Sibthorpe Professorship of Rural Economy in the University of Oxford; at the University of Edinburgh, a Professorship of agriculture; and at the University of Aberdeen there are lectures on agriculture. The botanical, geological, and chemical professorships and lectures in the different universities are, to a certain extent, auxiliary to the science of agriculture. In the absence of such establishments as the one at Grignon, in France, young men are sent as pupils to farmers in the counties where the best system of agriculture is practised, especially Norfolk, Lincolnshire, Northumberland, and the Lothians; but although this may be a good plan for obtaining practical knowledge, it is imperfect as regards the knowledge gained of the scientific principles of agriculture. The Earl of Ducie has established a model or example farm on his estate in Gloucestershire, where the scientific principles of agriculture are carried into operation; but this is very different from an institution which imparts a knowledge of these principles. In 1839 the late B. F. Duppa, Esq., published

a short pamphlet entitled 'Agricultural Colleges, or Schools for the Sons of Farmers,' which contains many useful suggestions for the establishment of such institutions. He laboured indefatigably in the promotion of this object, and probably would have succeeded but for his premature death. It is not improbable, indeed, that before long an agricultural college will be established in England, with an example-farm attached to it, as the Cirencester Farmers' Club, under the auspices of several noblemen and the principal landowners of the district, have issued proposals for such an institution; and in May, 1844, the club announced by advertisement their intention to apply for a charter of incorporation; and also advertised for tenders of farms of from 300 to 600 acres.

Schools of industry, similar to the one established by the late Rev. W. L. Rham at Winkfield, and by the Earl of Lovelace at Ockley, may be made the medium of imparting an acquaintance with the principles of agriculture, which at present the labouring classes do not usually obtain. To Winkfield school there are attached about four acres of good land; and under the guidance of so accomplished an agriculturist as Mr. Rham the scholars enjoyed the advantage of pursuing all the details of the most skilful husbandry, and undergoing a course of training in garden and farm management of no ordinary excellence. On Mrs. Davies Gilbert's estate there is a school of manual labour, and the principle on which it is established might perhaps be made conducive on a large scale to the two objects of enabling the scholars to acquire the elements of learning and of fitting them by proper industrial training to become expert and industrious in field and garden work. At the school here spoken of the master is paid one penny per week for each boy; but the chief emolument of the master arises from the labour of the boys on the school land. Their time is divided into two portions, one part of which the master devotes to their instruction in reading, writing, &c., and in return for which they employ another portion of their time in cultivating his

land. (*Committee of Council on Education, 1844.*)

In Ireland the government affords direct encouragement to agricultural education through the instrumentality of the Board of National Education. The persons who are trained for the office of teachers in the national schools are required to attend the lectures of a professor of agricultural chemistry; and during a portion of the time occupied in preparing for their future duties they are placed at the model farm at Glasneven, where they are lodged, and where, during five mornings of the week, they attend lectures on the principles of agriculture; and an examination subsequently takes place. On the sixth morning they are taken over the farm, and the operations going forward are explained to them. The Board admits a certain number of in-door pupils for the term of at least two years, who pay 10*l.* a year for board, lodging, and education. They work on the farm, attend the lectures, and receive such instruction as qualifies them to fill the office of bailiffs. There is likewise a class of schoolmasters trained to conduct agricultural schools. It is intended to establish twenty-five agricultural model schools in different parts of the country. The Agricultural Seminary at Templemoyle, six miles from Londonderry, is one of the most successful experiments which has yet been made in the United Kingdom to establish an institution for agricultural education. It was founded by the North West of Ireland Society. The plan is in some degree taken from the institution established by M. Fellenberg, at Hofwyl, in Switzerland. In 1841 the house contained 70 young men, as many as it can accommodate and the farm afford instruction to; and there were 40 applications for admission. The size of the farm is 172 acres. An account of the institution and of the course of instruction will be found in the 'Minutes of the Committee of Council on Education,' p. 565, 8vo. ed.

Such societies as the Scottish Agricultural Chemistry Association, established at the close of 1843, are very well calculated to advance the progress of scientific agriculture; and they can be es-

tablished in any district where a sufficient number of subscribers can be obtained to command the services of a competent chemist. Associations of this nature show how much can be done in this country without any assistance from the state. The object of the Scottish association is the diffusion of existing information, theoretical and practical, by means of occasional expositions, addresses, and correspondence; and secondly, the enlargement of the present store of knowledge by experimental investigations of practical agriculturists in the field and of the chemist in the laboratory. Landed proprietors who subscribe twenty shillings yearly, and tenants who subscribe ten shillings yearly, are entitled to have performed analyses of soils, manures, &c., according to a scale fixed upon; and if more than a certain number are required, a charge of one-half above the scale is made. Letters of advice, without an analysis being required, are charged 2s. 6d., and at present the number which each subscriber may write is not limited. Every agricultural society subscribing 5*l.* yearly to the funds of the Association is entitled to one lecture from the chemist; if 10*l.* to two lectures, &c. Counties which subscribe 20*l.* annually are entitled to appoint a member of the Committee of Management. The Society in question has raised a fund sufficient to defray all expenses for the ensuing four years. The chemist of the association has his laboratory at Edinburgh, but he is to visit various parts of Scotland according to certain regulations.

In France there are schools assisted by the state, where young persons can obtain instruction in agriculture both practical and theoretical. The principal institution of this kind is that at Grignon, where one of the old royal palaces and the domain attached to it, consisting of 1185 acres of arable, pasture, wood, and marsh land, has been given up on certain conditions. The professors are paid by the government, and the pupils are of two grades, one paying 48*l.* a year, and the other 36*l.* For the purpose of imparting theoretical knowledge, courses of lectures are given on the following subjects:—1. The rational prin-

ciples of husbandry, and on the management of a farm. 2. The principles of rural economy applied to the employment of the capital and stock of the farm. 3. The most approved methods of keeping farming accounts. 4. The construction of farm-buildings, roads, and implements used in husbandry. 5. Vegetable physiology and botany. 6. Horticulture. 7. Forest science. 8. The general principles of the veterinary art. 9. The laws relating to property. 10. Geometry applied to the measurement and surveying of land. 11. Geometrical drawing of farming implements. 12. Physics as applied to agriculture. 13. Chemistry, as applied to the analysis of soils, manures, &c. 14. Certain general notions of mineralogy and geology. 15. Domestic medicine, applied to the uses of husbandmen. The practical part of the education is conducted on the following system:—The pupils are instructed in succession in all the different labours of the farm. Some, for instance, under the direction of the professor of the veterinary art, perform the operations required by the casualties which are continually occurring in a numerous stock of cattle. Others are appointed to attend to the gardens, and to the following departments: woods and plantations; inspection of repairs taking place on the premises; making of starch, cheese, and other articles; the pharmaceutical department; book-keeping and the accounts. A daily register is kept of the amount of the manure obtained from the cattle of every kind. A pupil newly entered is appointed to act with one of two years' standing; and at the end of each week all are expected to make a report, in the presence of their comrades, of whatever has been done during the week in their respective departments. The professor, who presides over the practical part of their education, explains on the spot the proper manner of executing the various field operations; and he also gives his lectures on these different processes at the time when they are in actual progress. The professors in each department render their courses as practical as possible;—the professor of botany by herborizations; the professor of chemistry by geological excursions;

the professor of mathematics, by executing, on the plan he has pointed out, the survey and measurement of certain portions of land. After two years' training in the theory and practice of rural economy, the pupils undergo an examination from the professors collectively, and, if satisfactory, a diploma is granted, which certifies to the capacity of the pupil for fulfilling the duties of what may be styled an "Agricultural Engineer."

Institutions designed for the improvement of agriculture, and supported by the state, have been established in most parts of Germany. In Prussia there is a public model farm and agricultural academy in nearly every province. The most important of these institutions is the one at Mögeln, in Brandenburg, about forty miles from Berlin, which was founded by the late king. Von Thaer was at one period the director. The establishment consists of a college and a model farm of 1200 acres. When visited by Mr. Jacob, in 1820 ('Agriculture, &c. of Germany'), there were three professors, who resided upon the premises: one for mathematics, chemistry, and geology; one for the veterinary art; and the third for botany and the use of the various vegetable productions in the *Materia Medica*, as well as for entomology. Attached to the institution there was a botanic garden, arranged on the Linnæan system; an herbarium; a museum containing skeletons of domestic animals, models of agricultural implements, specimens of soils, &c. The various implements were made in workshops upon the farm, and the pupils were expected to acquire a general notion of the modes of constructing them. The sum paid by each pupil was very high, not less than 80*l.* a year.

At Hohenheim, in the kingdom of Wirtemberg, two leagues from Stuttgart, an old palace has been appropriated as an agricultural college. The quantity of land attached to the institution is about 1000 acres. The pupils are of two grades, and those belonging to the superior class pay for their board 150 florins, and for their instruction 300 florins a year, or altogether 37*l.*, and extra expenses make the annual cost

about 50*l.* Natives of Wirtemberg are admitted at a lower rate than the subjects of other states. The higher class of students do not, as at Grignon, take part in the actual labours of husbandry, but the means of theoretical instruction are very complete. Lectures are delivered by twelve professors on the following subjects:—Mathematics and physics, chemistry and botany, technology, tillage and other departments of rural economy, forestry, and the veterinary art. The lectures are so arranged that they can be either attended in two half-years or three or four. In the former case much preliminary information must have been acquired. There is attached to the institution a small botanical garden; a museum of zoological, botanical, and mineralogical objects; skeletons of domestic animals; collections of seeds and woods; and a library of works on rural economy. The establishment also comprises a manufactory of beet-root sugar, a brewery, a distillery of potato-spirit, and there is an apartment devoted to the rearing of silkworms. A part of the farm is reserved for experiments. The second class of students do the manual labour, but they are nearly maintained at the expense of the institution, and, when they can be spared from field-labour, they have the opportunity of attending the lectures at the college.

In Bavaria the king has given up the domain attached to the royal palace of Schleissheim for the purposes of a model farm; but a great mistake has been made in selecting land much below the average standard of fertility, which, as well as land of extraordinary productiveness, should be avoided. It is on a much inferior scale to the establishment at Hohenheim. In 1840 there were twenty-one scholars who paid about 15*l.* a year, and eleven who paid about 6*l.* The latter are merely field-labourers; and those who belong to the upper class are of about the same grade as the second class at Hohenheim.

There are agricultural institutions supported by the state at Vienna, Prague, Pesth, and various other places in the south-east of Europe. (*On public Institutions for the Advancement of Agricul-*

*tural Science*, by Dr. Daubeny; *Journals of Royal Agric. Soc. of England*; Dr. Lindley's *Gardener's Chron. and Agric. Gazette*, &c. &c.)

#### AGRICULTURE, STATISTICS OF.

In several countries of Europe there is a department of government organized either for collecting the statistics of agriculture or superintending institutions which have immediate relation to that branch of industry. In France these duties devolve upon a department of the Minister of Commerce and Agriculture. The management of the royal flocks, veterinary schools, and the royal studs; the distribution of premiums in agriculture; the organization and presidency of the superior and special councils of agriculture, are comprised in the duties of this ministerial department. The councils-general of agriculture, &c. in each department of France collect the agricultural statistics from each commune; and the quantity of land sown with each description of grain, the produce, and the quantity of live stock for the whole of the kingdom, are accurately known and published by the Minister of Commerce and Agriculture. In Belgium these facts are ascertained periodically, but not every year. In the United States of North America, at the decennial census, an attempt is made to ascertain the number of each description of live stock, including poultry; the produce of cereal grains, and of various crops; the quantity of dairy, orchard, and garden produce, &c., in each State. There are twenty-nine heads of this branch of inquiry. The only countries in Europe which do not possess statistical accounts of their agriculture founded on official documents are England and the Netherlands. In England the quantities of corn and grain sold in nearly three hundred market-towns, the quantities imported and exported, and the quantities shipped coast-ways, are accurately known, but no steps are taken by any department of the government to ascertain the quantities produced. On the same principle that a census of the population of a country is useful, it must be useful to have an account of its productive resources. The absence of official information is supplied by esti-

mates of a conjectural character, founded at best only on local and partial observation. In France it is positively ascertained that the average produce of wheat for the whole kingdom is under fourteen bushels per acre. In England it is known that the maximum produce of wheat per acre is about forty bushels, and that the minimum is about twenty bushels. The usual conjecture is that the average produce of the kingdom in years of fair crops is about twenty-eight bushels, but the total superficies sown with wheat or any other grain, and the total quantity of the produce, are matters simply of conjecture. The only statement the public or even the government are in possession of in respect to the quantity of land cultivated and uncultivated, and of land incapable of producing grain or hay, in Great Britain, rests upon the authority of private inquiry made by one person, Mr. Couling, a civil engineer and surveyor, who gave the details to the parliamentary committee on emigration in 1827, now seventeen years ago. As there is an account published weekly in the 'London Gazette' of the quantity of each description of grain sold in nearly three hundred market-towns in England, with the average prices, and the quantity of foreign corn and grain imported is also officially published, it would be putting into the hands of the community very important elements of calculation in reference to the supply of food, if they could also learn after each harvest what had been the breadth of land under cultivation for each species of produce respectively, and the amount of produce harvested. The result could not fail to be felt in greater steadiness of price, which is particularly desirable for the interests of the tenant farmer, and also highly advantageous to the public. For example, the harvest of 1837 was deficient to so great a degree, that before the produce of 1838 was secured the great superabundance of the two preceding harvests was all consumed, and the stock of grain was more nearly exhausted than it was ever known to have been in modern times. A reasonable advance of price would have checked consumption, which, as regards wheat, had been going on with unwonted profusion, but in



August, September, and October, 1837, the markets fell from 60s. 1d. to 51s. per quarter, and it was not until the middle of the following May that the average was again as high as it had been just before the harvest of 1837. By the third week in August, 1838, the average had risen to upwards of 73s., and wheat was admissible at the lowest rate of duty. The buyers consequently resorted suddenly to nearly every corn-market in Europe, and prices, aided by a wild spirit of speculation, which subsequently was productive of great loss to importers, rose enormously. It is contended that these losses and the fluctuation of prices would not have occurred if the produce of the harvest of 1837 had been more accurately known. (*On the Collection of the Statistics of Agriculture* by G. R. Porter, Esq., of the Board of Trade.) The probable operation which statistical facts officially collected would have upon agricultural improvement is thus adverted to by Mr. Porter:—"It has been stated that if all England were as well cultivated as the counties of Northumberland and Lincoln, it would produce more than double the quantity that is now obtained. . . . If the cultivators of land, where agricultural knowledge is the least advanced, could be brought to know, upon evidence that could not admit of doubt, that the farmer of Northumberland or Lincolnshire procured, from land of fertility not superior to his own, larger and more profitable crops than he is in the habit of raising, is it likely that he would be contented with his inferiority?" In 1836 the late Lord Sydenham, while president of the Board of Trade, in order to test the probability of success that might result from a more extended attempt, caused circular letters containing fifty-two simple but comprehensive queries relating to agriculture to be sent to each clergyman in the one hundred and twenty-six parishes of Bedfordshire. Out of this number only 27, or about one in five, replied, and further inquiry was abandoned. The tithe commissioners make returns of the crops in all parishes, but they do not do so simultaneously. There is, however, no insuperable difficulty in collecting the national statistics of agriculture, whenever government

thinks fit to undertake such a duty. On the 18th of April, 1844, on a motion in the House of Commons for an address to the queen praying for the establishment of some method of collecting agricultural statistics, the vice-president of the Board of Trade, on the part of the government, concurred in the object of the motion, but from various causes he declined at that time giving the motion his support. The yearly expense of the inquiry would be from 20,000*l.* to 30,000*l.*; and probably not a long period will elapse before the appropriate machinery will be in operation. In this way can government advance the interests of agriculture and of the public at the same time. In a country like England, which abounds with men of rank, wealth, and intelligence, who engage in scientific agriculture as a favourite pursuit, it is quite unnecessary for the government to assume the superintendence of matters which relate to practical agriculture; but this may be done with propriety in other countries, which are placed in different circumstances.

AIDE-DE-CAMP, a French term, denoting a military officer usually of the rank of captain, one or more of whom is attached to every general officer, and conveys all his orders to the different parts of his command. A field-marshal is entitled to four, a lieutenant-general to two, and a major-general to one. The king appoints as many aides-de-camp as he pleases, and this situation confers the rank of colonel. In January, 1844, the number of aides-de-camp to the queen was thirty-two. There were also eleven naval aides-de-camp to the queen, one of whom, of the rank of admiral, is styled first and principal aide-de-camp, and has a salary of 365*l.* per annum; and ten others, of the rank of captain, have 182*l.* 11*s.* per annum. There are also two aides-de-camp appointed by the queen from the officers of the Royal Marines, whose salary is the same as that of the naval aides-de-camp.

AIDS (directly from the French *Aides*, which in the sense of a tax is used only in the plural number). Under the feudal system, aids were certain claims of the lord upon the vassal, which were not so directly connected with the tenure of

land as reliefs, fines, and escheats. The nature of these claims, called, in the Latin of the age, *Auxilia*, seems to be indicated by the term: they were originally rather extraordinary grants or contributions than demands due according to the strict feudal system, though they were certainly founded on the relation of lord and vassal. These aids varied according to local custom, and became in course of time oppressive exactions. In France there were aids for the lord's expedition to the Holy Land, for marrying his sister and eldest son, and for paying a relief to his suzerain on taking possession of his land. The aids which are mentioned in the Grand Coutumier of Normandy for knighting the lord's eldest son, for marrying his eldest daughter, and for ransoming the lord from captivity, were probably introduced into England by the Normans. But other aids were also established by usage or the exactions of the lords, for, by *Magna Charta*, c. 12, it was provided that the king should take no aids, except the three above mentioned, without the consent of parliament, and that the inferior lords should not take any other aids.

The three kinds of aids above mentioned require a more particular notice, as this contribution of the vassal to the lord forms a striking feature in the feudal system of England.

1. When the lord made his eldest son a knight;—this ceremony occasioned considerable expense, and entitled the lord to call upon his tenant for extraordinary assistance. 2. When the lord gave his eldest daughter in marriage, he had her portion to provide, and was entitled to claim a contribution from his tenants for this purpose. The amount of these two kinds of aid was limited to a certain sum by the Statute of Westminster 1, 3 Ed. I. c. 36, namely, at 20s. for a knight's fee, and at 20s. for every 20l. per annum value of socage lands, and so on in proportion. It was also provided that the aid should not be levied to make his son a knight until he was fifteen years old, nor to marry his daughter until she was seven years old. 3. The third aid, which was to ransom the lord when taken prisoner, was of less frequent occurrence

than the other two, and was uncertain in amount; for if the lord were taken prisoner, it was necessary to restore him, however exorbitant the ransom might be. In the older treatises on feudal tenures there is much curious matter upon the various kinds of aids. Aids for knighting the lord's son and marrying the lord's daughter are abolished by the stat. 12 Car. II. c. 24, and the aid for ransoming the lord's person is obsolete.

Aids is also a general name for the extraordinary grants which are made by the House of Commons to the crown for various purposes. In this sense, aids, subsidies, and the modern term supplies, are the same thing. The aids were in fact the origin of the modern system of taxation.

*Auxilia* is the Latin word used by Bracton and other writers when they are speaking of the feudal aids above enumerated. The word *Aide* is not derived from the Latin *Auxilium*, but from the Low Latin *Adiuda*. (Du Cange, *Gloss. Med. et Infim. Latin.*) The Spanish form *ayuda*, 'assistance,' and the Italian *aiuto*, also clearly indicate the origin of the word 'aide,' which is from the participial form *adjuta* of the Latin verb *adjuvare*.

ALBINATUS JUS. [AUBAINE.]

ALDERMAN. This word is from the Anglo-Saxon *ealdorman* or *eoldorman*. The term *ealdorman* is composed of *ealdor*, originally the comparative degree of the adjective *eald*, 'old,' and *man*; but the word *ealdor* was also used by the Anglo-Saxons as a substantive, and as such it was nearly synonymous with the old English term *elder*, which we so often meet with in the English version of the Bible. A prior of a monastery was called *Temple-ealdor*; the magistrate of a district, *Hiredes-ealdor*; the magistrate of a hundred, *Hundredes-ealdor*, &c. In a philological sense, the terms *ealdor* and *ealdorman* were synonymous and equivalent; but in their political acceptation they differ, the former being more general, and, when used to express a specific degree, commonly denoting one that is lower than *ealdorman*. In both terms the notion of some high office, as well as that of rank or dignity, seems to be inherent;

but *ealdorman* at the same time expressed a definite degree of hereditary rank or nobility which *ealdor* does not so necessarily imply. Princes, earls, governors of provinces, and other persons of distinction, were generally termed Aldermen by the Anglo-Saxons. But besides this general signification of the word, it was also applied to certain officers; thus there was an Alderman of all England (*aldermannus totius Angliæ*), the nature of whose office and duties the learned Spelman says "he cannot divine, unless it corresponded to the office of Chief Justiciary of England in later times." There was also a King's Alderman (*aldermannus regis*), who has been supposed to have been an occasional judge, with an authority or commission from the king to administer justice in particular districts: it is very possible, however, that his duties may have resembled those exercised by the king's sergeant in the time of Bracton, when there are strong traces of the existence of an officer so called, appointed by the king for each county, and whose duty it was to prosecute pleas of the crown in the king's name. Spelman, however, doubts whether the King's Alderman may not have been the same person with the Alderman of the county, who was a kind of local judge, intrusted, to a certain extent, with the administration of civil and criminal justice. Besides those above mentioned, there were also Aldermen of cities, boroughs, and castles, and Aldermen of hundreds.

In modern times, Aldermen are individuals invested with certain powers in municipal corporations, either as civil magistrates themselves, or as associates to the chief civil magistrates of cities or corporate towns. The functions of Aldermen, before the passing of the Municipal Corporations Act, varied somewhat, according to the several charters under which they acted.

In the municipal boroughs of England and Wales as remodelled by 5 & 6 Wm. IV. c. 76, the resident burgesses elect councillors, who, in the larger boroughs which are divided into four or more wards, must be burgesses possessing at least 1000*l.* in property or rated at 30*l.* annual value; and in the smaller boroughs they must possess

at least 500*l.* in property or be rated at 15*l.* per annum. This principle of qualification by property had no existence under the old municipal system. The councillors thus elected by the burgesses at large hold office for three years, and one-third of their number go out annually. The aldermen are elected by the council from its own number for six years, and one-half go out every three years. One-fourth of the municipal council consists of aldermen, and three-fourths of councillors; but the only difference between them is in the mode of election and in their term of office. In the 178 municipal boroughs remodelled by the act above mentioned, there are 1080 aldermen, and of course 3240 councillors. The number of councillors varies from 12 to 48, according to the size of the borough, and the number of aldermen from 4 to 16.

In the Corporation of London, which is not remodelled by the 5 & 6 Wm. IV. c. 76, the Court of Aldermen consists of twenty-six Aldermen, including the Lord Mayor. Twenty-five of these are elected for life by such freemen as are householders of the wards, the house being of the annual value of 10*l.*, and the freeman paying certain local taxes to the amount of 30*s.*, and bearing lot in the ward. In this way twenty-four of the wards, into which the city is divided, send up one alderman each: the two remaining wards send up another. The twenty-sixth alderman belongs to a twenty-seventh nominal ward, which comprehends no part of the city of London, but only the dependency of Southwark. This alderman is not elected at all, but, when the aldermancy is vacant, the other aldermen have, in seniority, the option of taking it; and the alderman who does take it holds it for life, and thereby creates a vacancy as to the ward for which he formerly sat. The Court of Aldermen possess the privilege of rejecting, without any reason assigned, any person chosen for Alderman by the electors, and, after three such rejections, of appointing an alderman to the vacancy. The Lord Mayor is appointed from such of the aldermen as have served the office of Sheriff. Of these the Common Hall names two, and of these two the Court of Aldermen

selects one. The Court of Aldermen is the bench of magistrates for the city of London, and it possesses also authority of a judicial and legislative nature in the affairs of the corporation. Although the Aldermen form a part of the Court of Common Hall (which consists exclusively of freemen who are liverymen), they are not in the habit of speaking or voting at elections, at least not in the character of Aldermen. They are members of the Court of Common Council, the legislative body of the corporation, which consists of 264 members, all of whom, excepting the Aldermen, are elected annually by the same electors who elect the Aldermen. (*Second Report of the Commissioners of Corporation Inquiry*, 1837.)

In the few boroughs which are not included in the schedules of the Municipal Corporations Act the aldermen are elected according to custom or charter. With the exception of the city of London, these boroughs are insignificant, and the corporation is little better than a nominal body.

ALE, an intoxicating beverage composed of barley or other grain steeped in water and afterwards fermented, has been used from very early times. Pliny the Elder states that in his time it was used among the nations who inhabited the western part of Europe. He says (*Hist. Nat.*, xiv. 29, ed. Hardouin) that the Western nations have intoxicating liquors made of grain steeped, and that the mode of making them is different in the provinces of Gaul and Spain, and their names different, though the principle is the same: he adds that in Spain they had the art of making these liquors keep. He also mentions the use of beer by the Egyptians, to which he gives the name of "Zythum." The Spanish name for it was "celia" or "ceria;" in Gaul it was called "cervisia," a word which was introduced into the Latin language, and is also preserved in the French "cervoise." (Pliny, xx. 25; Richelet, *Dictionnaire*.) Pliny evidently alludes to the process of fermentation, when he says that the foam (spuma) was used by the women for improving the skin of their faces.

Herodotus, who wrote 500 years before

Pliny, tells us that the Egyptians used a liquor made of barley (ii. 77). Dion Cassius says that the Pannonians made a drink of barley and millet (lib. xlix. c. 36, and the note in Reimar's edition). Tacitus states that the ancient Germans "for their drink drew a liquor from barley or other grain, and fermented it so as to make it resemble wine." (Tacitus, *De Mor. Germ.* c. 23.) Ale was also the favourite liquor of the Anglo-Saxons and Danes; it is constantly mentioned as used in their feasts; and before the introduction of Christianity among the Northern nations, it was an article of belief that drinking copious draughts of ale formed one of the chief felicities of their heroes in the Hall of Odin. The word ale is metonymically used as a term for a feast in several of the ancient Northern languages. Thus the Dano-Saxon word Iol, the Icelandic Ol, the Suedo-Gothic Oel, the Anglo-Saxon Geol, and our English word Yule are said to be synonymous with feast, and hence the terms Leet-ale, Lamb-ale, Whitsun-ale, Clerk-ale, Bride-ale, Church-ale, Midsummer-ale, &c. (Ellis's ed. of Brand's *Antiquities*, i. p. 159, and p. 258.) Ale is mentioned as one of the liquors provided for a royal banquet in the reign of Edward the Confessor. If the accounts given by Isidorus and Orosius of the method of making ale amongst the ancient Britons and other Celtic nations be correct, it is evident that it did not materially differ from our modern brewing. They state "that the grain is steeped in water and made to germinate; it is then dried and ground; after which it is infused in a certain quantity of water, which is afterwards fermented." (Henry's *History of England*, vol. ii. p. 364.)

In early periods of the history of England, ale and bread appear to have been considered as equally vituals or absolute necessities of life. This appears from the various assizes or ordinances of bread and ale (*assise panis et cervisie*) which were passed from time to time for the purpose of regulating the price and quality of these articles. In the 51st year of the reign of Henry III. (1266) a statute was passed, the preamble of which alludes to earlier statutes on the same sub-

ject, by which a graduated scale was established for the price of ale throughout England. It declared that "when a quarter of wheat was sold for three shillings, or three shillings and four-pence, and a quarter of barley for twenty pence or twenty-four pence, and a quarter of oats for fifteen pence, brewers in cities could afford to sell two gallons of ale for a penny, and out of cities three gallons for a penny; and when in a town (in burgo) three gallons are sold for a penny, out of a town they may and ought to sell four." In process of time this uniform scale of price became extremely inconvenient; and by the statute 23 Henry VIII. c. 4, it was enacted that ale-brewers should charge for their ale such prices as might appear convenient and sufficient in the discretion of the justices of the peace or mayors within whose jurisdiction such ale-brewers should dwell. The price of ale was regulated by rules like those above stated, and the quality was ascertained by officers appointed for the purpose. [ALE-CONNER.]

**ALE-CONNER.** An ale-conner is an ale-kenner, one who kens or knows what good ale is. The office of ale-taster or ale-conner is one of great antiquity. Those who held it were called "gustatores cervisiæ." Ale-conners or ale-tasters were regularly chosen every year in the court-leet of each manor, and were sworn to examine and assay the beer and ale, and to take care that they were good and wholesome, and sold at proper prices according to the assize; and also to present all defaults of brewers to the next court-leet. Similar officers were also appointed in boroughs and towns corporate; and in many places, in compliance with charters or ancient custom, ale-tasters are, at the present day, annually chosen and sworn, though the duties of the office are fallen into disuse. In the manor of Tottenham, and in many others, it was the duty of the ale-conner to prevent unwholesome or adulterated provisions being offered for sale, and to see that false balances were not used. In 4 Jac. I. c. 5, which was intended for the prevention of drunkenness, the officers more especially charged with presenting offences against the act were constables, churchwardens,

head-boroughs, tithing-men, ale-conners, and sidesmen.

The duty of the ale-conners appointed by the corporation of the City of London is to ascertain that the beer sold in the city is wholesome, and that the measures in which it is given are fair. For this purpose they may enter into the houses of all victuallers and sellers of beer within the city. The investigation is made four times in the year; and on each occasion it occupies about fourteen days. The days are not publicly known beforehand. Southwark is not visited. The investigation into the wholesomeness of the article has fallen into disuse. Fairness in the measures is ensured by requiring all pots to be stamped with the city arms, and the ale-conners report to the aldermen such houses as do not comply with the rule, and such as have pots with forged stamps. The number of pots annually stamped in the five years from 1829 to 1833 averaged 5599 dozen. In 1829 there were 760 houses on the ale-conners' lists, and in 1833 there were 780. The Commissioners of Corporation Inquiry state that in some instances the owners of the houses have refused to allow the officers to inspect; and that "till very recently the visit of the ale-conners to the several houses took place without any inspection being made." Each of the ale-conners has an annual salary of 10*l.*; and besides this, "either by right or courtesy," they receive a small sum at each house where they visit, varying from 2*s.* 6*d.* to 1*s.* The sums given in this way have become smaller, since the duty has been more carefully performed. In the first quarter of 1833 the ale-conners collected 39*l.* 17*s.*; and in the second quarter, 37*l.* 10*s.* 6*d.* The commissioners state that the income from this source is decreasing. Each ale-conner had, therefore, at the time of the inquiry, a salary of about 35*l.* a year, paid by the City. (*Second Report of Commissioners of Corporation Inquiry*, 1837.) In the municipal boroughs of England and Wales, to which the inquiries of the commissioners extended (234 in number), there were found in twenty-five boroughs officers called "Ale-Tasters;" in six they were termed "Ale-Founders;" and in four "Ale-Conners."

The ancient regulations which the ale-conners were appointed to carry into effect appear to have been dictated by a regard to public health; but in modern times, when ale and beer had become exciseable commodities, the restrictions and provisions introduced from time to time had for their object principally the security of the revenue and the convenient collection of duties. [ADULTERATION.]

ALE-FOUNDER. [ALE-CONNER.]

ALEHOUSES. By the common law of England, a person might open a house for the sale of beer and ale as freely as he might keep a shop for the purpose of selling any other commodity; subject only to a criminal prosecution for a nuisance if his house was kept in a disorderly manner, by permitting tippling or excessive drinking, or encouraging bad company to resort thither, to the danger and disturbance of the neighbourhood. But in course of time this restriction was found to be insufficient; and in the eleventh year of the reign of Henry VII. (1496) an act was passed "against vacabounds and beggers" (11 Hen. VII. c. 2), which contained a clause empowering two justices of the peace "to rejecte and put away comen ale selling in tounes and places where they shall think convenyent, and to take suertie of the keepers of ale-houses of their gode behavyng by the discrecion of the seid justices, and in the same to be avysed and agreed at the tyme of their sessions." This slight notice of the subject in the statute 11 Henry VII. c. 2, seems to have been entirely disregarded in practice; and a statute passed in 1552 (5 & 6 Edward VI. c. 25) recites that "intolerable hurts and troubles to the commonwealth of this realm doth daily grow and increase through such abuses and disorders as are had and used in common alehouses and other houses called tippling-houses," and power was given to two justices to forbid the selling of beer and ale at such alehouses; and it was enacted that none should be suffered to keep alehouses unless they were publicly admitted and allowed at the sessions, or by two justices of the peace; and the justices were directed to take security, by recognizances, from all keepers of alehouses, against the using of unlawfu! games, and for the

maintenance of good order therein; which recognizances were to be certified to the quarter-sessions and there recorded. Authority is then given to the justices at quarter-sessions to inquire whether any acts have been done by alehouse-keepers which may subject them to a forfeiture of their recognizances. It is also provided that if any person, not allowed by the justices, should keep a common alehouse, he might be committed to gaol for three days, and, before his deliverance, must enter into a recognizance not to repeat his offence; a certificate of the recognizance and the offence is to be given to the next sessions, where the offender is to be fined 20s. This statute formed the commencement of the licensing system, and was the first act of the legislature which placed alehouses expressly under the control and direction of the local magistrates; and alehouses continued to be regulated by its provisions, without any further interference of the legislature, for upwards of fifty years.

In 1604 a statute was passed (2 Jac. I. c. 9) expressly, as the preamble states, for the purpose of restraining the "inordinate haunting and tippling in inns, alehouses, and other victualling houses." This act of parliament recites, that "the ancient, true, and principal use of such houses was for the lodging of wayfaring people, and for the supply of the wants of such as were not able, by greater quantities, to make their provision of victuals, and not for entertainment and harbouring of lewd and idle people, to spend their money and their time in lewd and drunken manner;" and then enacts "that any alehouse-keeper suffering the inhabitants of any city, town, or village, in which his alehouse is situated (excepting persons invited by any traveller as his companion during his abode there; excepting also labourers and handicraftsmen, on working-days, for one hour at dinner time to take their diet, and occasional workmen in cities, by the day, or by the great (by the piece), lodging at such alehouses during the time of their working), to continue drinking or tippling therein, shall forfeit 10s. to the poor of the parish for each offence." From the exceptions introduced into this statute, and also from the preamble, it is

clear that, in the time of James I., it was common for country labourers both to eat their meals and to lodge in alehouses.

The operation of the last-mentioned statute was limited to the end of the next session of parliament, in the course of which a statute (4 Jac. I. c. 4) was passed, imposing a penalty upon persons selling beer or ale to unlicensed alehouse-keepers; and by another statute (4 Jac. I. c. 5) of the same parliament, it was enacted that every person convicted, upon the view of a magistrate, of remaining drinking or tipping in an alehouse, should pay a penalty of 3s. 4d. for each offence, and in default of payment be placed in the stocks for four hours." The latter statute further directs that "all offences relating to alehouses shall be diligently presented and inquired of before justices of assize, and justices of the peace, and corporate magistrates; and that all constables, ale-conners [ALE-CONNER], and other officers, in their official oaths shall be charged to present such offences within their respective jurisdictions."

The next legislative notice of alehouses is in the 7 Jac. I. c. 10, which, after reciting that "notwithstanding former laws, the vice of excessive drinking and drunkenness did more and more abound," enacts, as an additional punishment upon alehouse-keepers offending against former statutes, that, "for the space of three years, they should be utterly disabled from keeping an alehouse."

The 21 Jac. I. c. 7, declares that the above-mentioned statutes, having been found by experience to be good and necessary laws, shall, with some additions to the penalties, and other trifling alterations, be put in due execution, and continue for ever.

A short statute was passed soon after the accession of Charles I. (1 Car. I. c. 4), which supplied an accidental omission in the statutes of James; and a second (3 Car. I. c. 3) facilitates the recovery of the 20s. penalty imposed by the statute of Edward VI., and provides an additional punishment, by imprisonment, for a second and third offence. At this point all legislative interference for the regulation and restriction of alehouses was suspended for more than a century.

The circumstances which led to the passing of the above-mentioned statutes in the early part of the reign of James I., and the precise nature of the evils alluded to in such strong language in the preambles, are not described by any contemporaneous writers. It appears, however, from the Journals, that these statutes gave rise to much discussion in both houses of parliament, and were not passed without considerable opposition. These laws never appear to have produced the full advantage which was expected. During the reign of Charles I. the complaints against alehouses were loud and frequent. In the year 1635 we find the Lord Keeper Coventry, in his charge to the judges in the Star Chamber previously to the circuits, inveighing in strong terms against them. (Howell's *State Trials*, vol. iii. p. 835.) He says, "I account alehouses and tipping-houses the greatest pests in the kingdom. I give it you in charge to take a course that none be permitted unless they be licensed; and, for the licensed alehouses, let them be but a few, and in fit places; if they be in private corners and ill places, they become the dens of thieves—they are the public stages of drunkenness and disorder; in market-towns, or in great places or roads, where travellers come, they are necessary." He goes on to recommend it to the judges to "let care be taken in the choice of alehouse-keepers, that it be not appointed to be the livelihood of a great family; one or two is enough to draw drink and serve the people in an alehouse; but if six, eight, ten, or twelve must be maintained by alehouse-keeping, it cannot choose but be an exceeding disorder, and the family, by this means, is unfit for any other good work or employment. In many places they swarm by default of the justices of the peace, that set up too many; but if the justices will not obey your charge herein, certify their default and names, and I assure you they shall be discharged. I once did discharge two justices for setting up one alehouse, and shall be glad to do the like again upon the same occasion."

During the Commonwealth, the complaints against alehouses still continued, and were of precisely the same nature as

those which are recited in the statutes of James I. At the London sessions, in August, 1654, the court made an order for the regulation of licences, in which it is stated that the "number of alehouses in the city were great and unnecessary, whereby lewd and idle people were harboured, felonies were plotted and contrived, and disorders and disturbances of the public peace promoted. Among several rules directed by the court on this occasion for the removal of the evil, it was ordered that "no new licences shall be granted for two years."

During the reign of Charles II. the subject of alehouses was not brought in any shape under the consideration of the legislature; and no notice is taken by writers of that period of any peculiar inconveniences sustained from them, though in 1682 it was ordered by the court, at the London sessions, that no license should in future be granted to alehouse-keepers who frequented conventicles. Locke, in his 'Second Letter on Toleration,' published in 1690, alludes to their having been driven to take the sacrament for the sake of their places, or "to obtain licences to sell ale."

The next act of parliament on the subject passed in the year 1729, when the statute 2 Geo. II. c. 28, § 11, after reciting that "inconveniences had arisen in consequence of licences being granted to alehouse-keepers by justices living at a distance, and therefore not truly informed of the occasion or want of alehouses in the neighbourhood, or the characters of those who apply for licences, enacts that "no licence shall in future be granted but at a general meeting of the magistrates acting in the division in which the applicant dwells." At this period the sale of spirituous liquors had become common; and in the statute which we have just mentioned a clause is contained, placing the keepers of liquor or brandy-shops under the same regulations as to licences as alehouse-keepers. The eagerness with which spirits were consumed at this period by the lower orders of the people in England, and especially in London and other large towns, appears to have resembled rather the brutal intemperance of a tribe of savages than the

habits of a civilized nation. Various evasions of the provisions of the licensing acts were readily suggested to meet this inordinate demand; and in 1733 it became necessary to enforce, by penalty, the discontinuance of the practice of "hawking spirits about the streets in wheelbarrows, and of exposing them for sale on bulks, sheds, or stalls." (See 6 Geo. II. c. 11.) From this time alehouses became the shops for spirits, as well as for ale and beer; in consequence of which their due regulation became a subject of much greater difficulty than formerly; and this difficulty was increased by the growing importance of a large consumption of these articles to the revenue. Besides this, all regulations for the prevention of evils in the management of alehouses were now embarrassed by the arrangements which had become necessary for the facility and certainty of collecting the Excise duties.

In 1753 a statute was passed (26 Geo. II. c. 31) by the provisions of which, with some trifling modifications by later statutes, the licensing of alehouses continued to be regulated for the remainder of the last century. This statute, after reciting that "the laws concerning alehouses, and the licensing thereof, were insufficient for correcting and suppressing the abuses and disorders frequently committed therein," contains, among others, the following enactments:—1. That upon granting a licence to any person to keep an alehouse, such person should enter into a recognizance in the sum of 10*l.* with sufficient sureties, for the maintenance of good order therein. 2. That no licence should be granted to any person not licensed the preceding year, unless he produced a certificate of good character from the clergyman and the majority of the parish officers, or from three or four respectable and substantial inhabitants, of the place in which such alehouse is to be. 3. That no licence should be granted but at a meeting of magistrates, to be held on the 1st of September in every year, or within twenty days afterwards, and should be made for one year only. 4. Authority is given to any magistrate to require an alehouse-keeper, charged upon the information of



any person with a breach of his recognizance, to appear at the next quarter-sessions, where the fact may be tried by a jury, and in case it is found that the condition of the recognizance has been broken, the recognizance is to be estreated into the Exchequer, and the party is utterly disabled from selling ale or other liquors for three years.

By a statute passed in 1808 (48 Geo. III. c. 143) a difference was introduced into the mode of licensing, not with a view to the internal regulation of alehouses, but for purposes connected with the collection of the revenue. The licence, which was formerly obtained from the magistrates, was, by that act, to be granted by the commissioners, collectors, or supervisors of Excise, under certain specific directions, and upon the production by the applicant of a previous licence or allowance, granted by the magistrates, according to the provisions of the former statutes respecting licensing.

The next act of parliament upon this subject was passed in 1822 (3 Geo. IV. c. 77), but as that statute continued in operation for only a few years, it is unnecessary to specify its provisions further than to notice that the preamble states the insufficiency of the laws previously in force respecting alehouses, and that one of its provisions is considerably to increase the amount of the recognizances required both from the alehouse-keeper and his sureties.

In 1828 a general act to regulate the granting of alehouse licences was passed (9 Geo. IV. c. 61), which repealed all former statutes on this subject, and enacts a variety of provisions, of which the following are the most important:—1. Licences are to be granted annually, at a special session of magistrates, appointed and summoned in a manner particularly directed, and to be called the General Annual Licensing Meeting, to be holden in Middlesex and Surrey, within the first ten days of March, and in every other place between the 20th of August and the 14th of September. Any person who is refused a licence may appeal to the quarter-sessions; and no justice is to act in an appeal who was concerned in the refusal of the licence. 2. Every person in-

tending to apply for a licence must affix a notice of his intention, with the name, abode, and calling of the applicant, on the door of the house which he wishes to open as an alehouse, and on the door of the church or chapel of the place in which it is situated, on three several Sundays, and must serve a copy of it upon one of the overseers, and one of the peace-officers.

3. If a riot or tumult happens, or is expected to happen, two justices may direct any licensed alehouse-keeper to close his house; and if this order be disobeyed, the keeper of the alehouse is to be deemed not to have maintained good order therein. 4. The licence is subjected to an express stipulation that the keeper of the house shall not adulterate his liquors; that he shall not use false measures; that he shall not permit drunkenness, gaming, or disorderly conduct in his house; that he shall not suffer persons of notoriously bad character to assemble therein; and that (except for the reception of travellers) he shall not open his house during divine service on Sundays and holidays. 5. Heavy and increasing penalties for repeated offences against the tenor of the licence are imposed; and magistrates at sessions are empowered to punish an alehouse keeper, convicted by a jury of a third offence against the tenor of his licence, by a fine of 100*l.*, or to adjudge his licence to be forfeited.

Under the Metropolitan Police Act (2 & 3 Vict. c. 47), which under certain conditions may be extended to within fifteen miles of Charing Cross, all public-houses are to be shut on Sundays until one o'clock in the afternoon, except for refreshment of travellers; and publicans are prohibited from supplying distilled liquors to persons under sixteen years of age, under a penalty for the first, second, and third offences of 20*l.*, 40*l.*, and 50*l.* This latter clause does not appear to be enforced.

The closing of public-houses on Sunday mornings within the metropolitan police district has met with general approbation. Taking the average of the first five months in the years 1838-39, the total number of drunken persons apprehended on the Sunday by the police was 2301, and in the first five months after the new act

came into operation the number was 1328. The decrease was most marked in the police divisions situated in the centre of the metropolis. In the Holborn division it was 48 per cent.; in the Covent Garden division, 52 per cent.; and in the St. James's division, 79 per cent. (*Statement of the Commissioners of Police*, vol. iv., p. 268, of *Journal of London Statistical Society*.)

The next act of parliament which relates to the regulation of alehouses is the "act to permit the general sale of beer and cider by retail in England." (1 Will. IV. c. 64.) The following are the most material provisions of this statute:—

1. That any householder, desirous of selling malt liquor, by retail, in any house, may obtain an Excise licence for that purpose, to be granted by the Commissioners of Excise in London, and by collectors and supervisors of Excise in the country, upon payment of two guineas; and for cider only, on payment of one guinea.
2. That a list of such licences shall be kept at the Excise Office, which is at all times to be open to the inspection of the magistrates.
3. That the applicant for a licence must enter into a bond with a surety for the payment of any penalties imposed for offences against the act.
4. That any person licensed under the act, who shall deal in wine or spirits, shall be liable to a penalty of 20*l*.
5. That in cases of riot, persons so licensed shall close their houses upon the direction of a magistrate.
6. That such persons suffering drunkenness or disorderly conduct in their houses shall be subject to penalties which are to be increased on a repetition of the offences, and the magistrates before whom they are convicted may disqualify them from selling beer for two years.
7. That such houses are not to be open before four in the morning nor after ten in the evening, nor during divine service on Sundays and holidays.

The effect of the above statute is to withdraw the authority of granting licences to houses opened for the sale of ale, beer, and cider only, from the local magistrates, in whose hands it had been exclusively vested for nearly 300 years, and to supersede their direct and imme-

diately superintendence and control of such houses. It creates a new class of alehouse keepers distinct from those who are licensed by the magistrates, and who only are called licensed victuallers. The consequence of the facility of obtaining licences upon a small pecuniary payment, and without the troublesome and expensive process directed by former statutes, was, as might be expected, a rapid and enormous multiplication of alehouses throughout the country.

But whatever might have been the state of these houses under the first Beer Act (1 Wm. IV. c. 64), there is no reason to believe that under existing acts they are now any worse than the licensed public-houses. By 4 & 5 Wm. IV. c. 85, the preamble of which recited that much evil had arisen from the management of houses in which beer and cider are sold by retail under 1 Wm. IV. c. 64, it was enacted that each beer-seller is to obtain his annual Excise licence only on condition of placing in the hands of the Excise a certificate of good character signed by six rated inhabitants of his parish, none of whom must be brewers or maltsters. Such a certificate is not to be required in towns containing a population of 5000 and upwards; but the house to be licensed is to be one rated at 10*l*. a year. This act makes a difference between persons who sell a liquor to be drunk on the premises and those who sell it only to be drunk elsewhere.

By a Treasury order, beer sold at or under 1*½d*. a quart may be retailed without a licence: the officers of Excise are empowered to enter such houses and to examine all beer therein.

The act 3 & 4 Vict. c. 61, amends both of the above acts. It provides that a licence can only be granted to the real occupier of the house in which the beer or cider is to be retailed; and it raises the rated value of such house to 15*l*. in towns containing a population of 10,000 and upwards; in towns of betwixt 10,000 and 2500, to 11*l*.; and in towns of smaller size the annual value is to be not less than 8*l*. Every person applying for a licence is to produce a certificate from the overseer of his being the real occupier of the house, and of the amount at which it is rated. A refusal

to grant this certificate renders the overseer liable to a penalty of 20*l.*; and any person forging a certificate, or making use of a certificate knowing it to be false, is to forfeit 50*l.*

The hours for opening and closing beer-shops are now regulated by the above act. In London and Westminster, and within the boundaries of the metropolitan boroughs, they are not to be opened earlier than five in the morning, and the hour of closing is twelve o'clock, but eleven o'clock in any place within the Bills of Mortality, or any city, town, or place not containing above 2500 inhabitants; and in all smaller places, five o'clock is the hour for opening and ten o'clock for closing. On any Sunday, Good Friday, or Christmas-day, or any day appointed for a public fast or thanksgiving, the houses are not to be opened before one o'clock in the afternoon.

The houses of alehouse-keepers, otherwise called licensed victuallers, are not exempt from the window duty; but if the bar-room be used solely for the sale of their commodities, and not for the entertainment of guests, the window of that room is to be exempt from duty. (Communication from Chancellor of Exchequer to Liverpool Victuallers' Society, April, 1844.) The licensed victuallers are liable to have soldiers billeted upon them, and they consider the non-exemption from the window duty a grievance, as other traders, who have no such burdens, enjoy the benefits of this exemption. The keepers of beer-shops who sell ale to be consumed on the premises, are liable to have soldiers billeted on them.

The number of licensed victuallers in England and Wales has increased from 50,947 in 1831 to 57,698 in 1843. The only year which shows a decrease on the preceding year was 1842, the number in 1841 having been 57,768. In 1840 there were 7610 houses occupied by licensed victuallers, the rental of which was under 8*l.*; 10,769 houses under 10*l.*; 20,185 under 20*l.*; and 5335 at and above 50*l.*

The number of beer-shops of both classes was 44,134 in 1836, and they have gradually declined to 36,298 in 1842, and 35,479 in 1843. In 1836 there were 32,104 retailers of beer to be consumed

on the premises; in 1842 only 31,821; and in 1843 the number was 31,227. In 1839, after a gradual increase in the preceding three years, the number of retailers who sold beer for consumption elsewhere than on the premises was 5941, and the number has since regularly decreased to 4477 in 1842, and 4252 in 1843.

The retailers in cider and perry under the acts for the sale of beer were 1913 in number in 1835, and only 438 in 1842.

Number of licensed victuallers and beer retailers in England and Wales who brewed their own beer, in 1843:—Licensed victuallers, 26,806; retailers of beer to be consumed on the premises, 12,761; retailers of beer not to be consumed on the premises, 1245. Malt consumed by the above:—By licensed victuallers, 7,567,945 bushels; by retailers for consumption on the premises, 2,761,672; by retailers for consumption elsewhere, 397,188 bushels. In the Country Excise Collections one half the licensed victuallers brew; and in London there are only 10 who brew out of 4344.

The victuallers and keepers of beer-shops who do not brew are of course supplied by brewers, of whom there were 2318 in England and Wales in 1843, who used 15,962,323 bushels of malt; rather more than one-third of this quantity of malt (5,349,143 bushels) being consumed by 98 brewers in the London Excise Collection. Since 1785 brewers of beer for sale have been compelled to take out an Excise licence, the cost of which is in proportion to the quantity brewed. In 1840, the number of brewers of strong beer not exceeding 20 barrels was 8232; above 20 and under 50 barrels, 8821; above 50 and under 100 barrels, 10,424; above 100 and under 1000 barrels, 16,634 exceeding 1000 barrels, 1607.

In October, 1830, the duty of 9*s.* per barrel on strong beer, and 1*s.* 11*d.* on table and small beer, was abolished. In the previous year the consumption of England and Wales was 6,559,210 barrels of strong and 1,530,419 barrels of small beer, which allows for upwards of 21 gallons per head on the year's consumption. The produce of the duty was 3,217,812*l.* With the same rates of duty,

the produce of this branch of revenue was only 79,414*l.* in Scotland: the beer duty in Ireland ceased in 1795. The acts for closing public houses on Sunday mornings and other days of religious service, being limited to the metropolis and certain towns, the 11 & 12 Vict. c. 49 enacts that no person in other parts of Great Britain shall open his house for the sale of fermented or distilled liquors before half-past twelve o'clock, or till the close of the morning service in the principal place of worship.

**ALIEN.** An alien is one who is born out of the ligeance (allegiance) of the king. (Littleton, 198.) The word is derived from the Latin *alienus*; but the word used by the English or other law writers in Latin is *alienigena*. The condition of an alien, according to this definition, is not determined by place, but by allegiance [**ALLEGIANCE**], for a man may be born out of the realm of England, or without the dominions of the king, and yet he may not be an alien. It is essential to alienage that the birth of the individual occurred in a situation and under circumstances which gave to the king of this country no claim to his allegiance.

The following instances will serve to illustrate the description of an alien. The native subject of a foreign country continues to be an alien, though the country afterwards becomes a part of the British dominions. Thus, persons born in Scotland *before* the union of the crowns by the accession of James I., were aliens in England even *after* that event; but those who were born afterwards were adjudged to be natural-born subjects. This question was the subject of solemn discussion in the reign of that prince; and the reported judgment of the court has guided lawyers in all similar controversies. Persons born in those parts of France which formerly belonged to the crown of England, as Normandy, Guienne, and Gascony, were not considered as aliens so long as they continued so annexed; and, upon the same principle, persons born at this day in any of our colonial possessions are considered native subjects. A man, born and settled at Calais whilst it was in the possession of the English,

fled to Flanders with his wife, then pregnant; and there, after the capture of Calais by the French, had a son: the issue was held to be no alien. If the king's enemies invade the kingdom, and a child is born among them, the child is an alien.

The children of ambassadors, and other official residents in foreign states, have always been held natives of the country which they represent and in whose service they are. This rule prevailed even at a time when the law of alienage was stricter than it now is. It has been since so far extended by various enactments, that all children born abroad, whose fathers or grandfathers on the *father's* side were natural subjects, are now deemed to be themselves natural-born subjects, unless their fathers were liable to the penalties of treason or felony, or were in the service of a prince at war with this country. (25 Ed. III. st. 2; 7 Anne, c. 5; 4 Geo. II. c. 21; 13 Geo. III. c. 21.)

The children of aliens born in England are, as a general rule, the same as natural-born subjects: they are entitled to the same rights and owe the same allegiance. But the children of a British mother by an alien are aliens if they are born out of the king's allegiance.

It follows from the general principles of our law that a man may be subject to a double and conflicting allegiance; for, though he may become a citizen of another state (the United States of America, for instance), or the subject of another king, he cannot divest himself of the duty which he owes to his own. So that, in the event of a war between the two states, he can take no active part on behalf of one, without incurring the penalty of treason in the other. This predicament may occur without any fault of the party; for the children of aliens are (except under peculiar circumstances) natural subjects of the state in which they were born: yet they may still be regarded as natural-born subjects of the state to which their parents owed allegiance.

Except for the term of 21 years, by 7 & 8 V. c. 66, an alien cannot hold lands in England. If he purchase lands, he takes them, but they are forfeited to the

king after the fact of purchase has been ascertained by a jury. These disabilities of an alien are founded on the nature of the tenure of land in England, which always implies fealty to some superior lord. It follows from the notion of an alien, that he cannot take land by descent, nor can he be entitled to land by the courtesy of England. An alien woman is not entitled to dower of her husband's lands, unless she has been either made a denizen or naturalized. It is also said that she is entitled to dower if she has married an Englishman by licence from the king. (Cruise, *Digest*, i. 159.) It has been said that an alien cannot take land by devise; but there seems to be no legal principle which shall prevent him from *taking* by devise, any more than from taking by purchase: the only question is, for whose benefit he *takes*, for he cannot hold it for his own benefit. (Ld. Hardwicke, *Knigh v. Duplessis*, 2 Vcs. 360.) An alien cannot be returned to serve on a jury, except where he is one *de medietate lingue*, that is, a jury of which one-half are foreigners.

An alien may possess himself of goods, money in the funds, and other personal effects, to any extent. The law has, from a very early period, recognised his right to reside without molestation within the realm for commercial purposes. "All merchants shall have safe and secure conduct to go out and to come into England; and to stay there, and to pass as well by land as by water, to buy and sell by the ancient and allowed customs, without any evil tolls, except in time of war, or when they are of any nation at war with us." (*Magna Charta*, art. 48.) An alien merchant enjoys the right to occupy a house and premises, and may hold a lease for years for the convenience of merchandize, yet if he leaves the realm or dies, in the one case his assignees, and in the other case his executors or administrators, cannot have the lease, but it goes to the crown. It is usual in such cases for the crown to make a grant of the forfeited interest to some person who is the best entitled to it. By 3 & 4 Wm. IV. c. 54 and c. 55, aliens cannot hold British registered shipping nor shares therein. An alien who is settled in England as

a merchant can only invest capital in foreign ships, which, in compliance with the navigation laws of other states, are of necessity manned with foreign seamen; and by a provision in our navigation laws a foreign ship can only import the productions of the country where she is registered. A naturalized person cannot enjoy the advantages of a British subject under commercial treaties with foreign countries until seven years after he has been naturalized. An alien cannot be a member of parliament, nor can he vote in the election of a member of parliament. (2 & 3 Wm. IV. c. 45.) But it has been established that the occupation of a dwelling-house by an alien gained him a settlement. (*Rex v. Eastbourne*, 4 East, 103.) The Municipal Corporations Act (5 & 6 Wm. IV. c. 76, s. 4) debars aliens from exercising the municipal privileges of a burgess.

The statute of 32 Hen. VIII. c. 16, which makes void all leases of dwelling-houses or shops to alien artificers or handicraftsmen, and imposes a penalty of 100s. for granting such lease, is still unrepealed. An alien can and could from a very early period bring an action or suit in the English courts in respect of personal property or contracts. An alien may dispose of his property by will. The *droit d'aubaine*, or right of succeeding to the effects of a deceased alien, formerly claimed by the crown of France, never prevailed in this country. Nor was it customary to enforce it even in France, except as against the natives of a state in which a similar right was exercised. For some time previous to its abolition by the first Constituent Assembly in 1791, it was generally stipulated by foreign countries, in their treaties with France, that their subjects should be exempt from the law. [AUBAINE.] This doctrine of reciprocity was adopted by the French Code (*Code Civil*, art. 726), but was abrogated in 1819, so far as the right of succession is concerned: so that aliens are now on the same footing in this respect with native Frenchmen throughout that kingdom. Aliens who are subject to any criminal proceeding in our courts of justice are in most cases entitled to trial by a jury *de medietate lingue*.

The disabilities of aliens may be partially removed by the king's letters-patent constituting the party a free denizen. From the date of the grant he is entitled to hold land, and transmit it to his after-born children, and to enjoy many other privileges of a native subject. But the most effectual method of naturalizing an alien is by act of parliament, called a Naturalization Bill, by which he is admitted to every right of a natural-born subject, except the capacity of sitting in parliament or the privy council, or of holding grants and offices of trust under the crown; an exclusion dictated by the jealous policy of the legislature on the accession of the House of Orange. [DENIZATION; NATURALIZATION.]

The rights of aliens, enumerated above, must be understood to apply only to alien *friends*. Alien *enemies*, or subjects of a foreign state at war with this country, are in a very different condition, and may be said to possess very few rights here.

As examples of the policy which has at different times been pursued in this country with reference to aliens, the following historical notices may be interesting:—

Magna Charta stipulates, in the article already cited, for the free access of foreign merchants for the purposes of trade, and its provisions were enforced and extended under the reigns of succeeding princes.

In the eighteenth year of Edward I. the parliament rolls contain a petition from the citizens of London, "that foreign merchants should be expelled from the city, because they get rich, to the impoverishment of the citizens;" to which the king replies, that "they are beneficial and useful, and he has no intention to expel them."

In the reign of Edward III. several beneficial privileges were conferred on aliens for the encouragement of foreign trade.

Under Richard II. and his successor statutes were made imposing various restraints on aliens trading within the realm, and especially prohibiting internal traffic with one another. Similar restrictions were introduced in the reign of Richard III., chiefly with a view to exclude them from retail trade; and in that

of Henry VIII. violent insurrections against aliens were followed by repeated statutes, reciting the mischievous consequences attributed to the influx of foreigners, and laying greater impediments in the way of their settlement within the realm. Several acts of this description are still in force, though they have fallen into practical disuse; but the courts of law have always put on them a construction the most favourable to foreign commerce, agreeably to the opinion of Lord Chief Justice Hale, that "the law of England hath always been very gentle in the construction of the disability, and rather contracting than extending it severely." (*Ventris's Reports*, vol. i. p. 427.)

In the reign of James I. the king was strongly petitioned to adopt exclusive measures against the aliens, who had flocked into the kingdom from the Low Countries; but James, though he acquiesced to a certain extent in the object of the petitioners, seems by no means to have participated in their feelings of enmity to aliens; for he professes his intention "to keep a due temperament between the interests of the petitioners and the foreigners;" and he especially commends "their industrious and sedulous courses, whereof he wished his own people would take example."

In the reign of Charles II. aliens were invited to settle in this country, and to engage in certain trades, by an offer of the privileges of native subjects. (15 Charles II. c. 15.) This statute was repealed by 12 & 13 Wm. III. c. 2; but there is an unrepealed act of 6 Anne, which naturalizes all foreigners who shall serve for two years on board any ship of her majesty's navy or a British merchant-ship.

In the early part of the last century (1708) a bill was brought into parliament for the general naturalization of all foreign Protestants upon their taking certain oaths and receiving the sacrament in any Protestant church, and it passed notwithstanding the strenuous opposition of the city of London, who represented that they would sustain loss by being obliged to remit certain dues which aliens were obliged to pay. After remaining in opera-

tion for three years, it was repealed on a suggestion of its injurious effects upon the interests of natural-born subjects; but a previous bill for effecting this object was rejected by the Lords. The reasons for and against the measure will be found in the fourth volume of Chandler's *Commons' Debates*, p. 119-122. In 1748 and 1751 a measure similar to the act of 1708 was brought forward, and in 1751 it was read a second time, but was dropped in consequence of the death of the Prince of Wales, which disarranged the public business.

Upon a review of the history of our policy, the inference seems to be, that although the maxims prevalent in our courts of law have been generally favourable to aliens, and although the government appear to have been at all times sensible of the advantages resulting from a liberal reception of foreign settlers engaged in trade, yet popular prejudices have been on the whole successfully exerted in impressing upon the legislature a more jealous and exclusive system.

The Alien Acts (33 Geo. III. c. 4; 34 Geo. III. c. 43, 67, and others) were passed entirely from political motives, and were mainly enacted on account of the great number of foreigners who came to England in 1792 and 1793. There is reason to believe that the crown has always had the power of banishing aliens from the realm, which these acts, however, expressly gave to it: at all events the power has undoubtedly been often exerted; and it seems almost to be included in the ampler prerogative of declaring war against the whole, or any part, of a foreign state. However, either from want of recent authentic precedents, or from a desire to accompany the measure with provisions not within the ordinary exercise of the prerogative, this power has not been exercised of late years without the sanction of parliament. In 1827 a measure was introduced (7 Geo. IV. c. 54) for the general registration of all aliens visiting this country, and every foreigner was required to present himself at the Alien-office. This act was repealed by 6 Wm. IV. c. 11, but new provisions of a similar character were introduced. By one clause masters of vessels arriving

from foreign parts are to declare what aliens (mariners navigating the vessel excepted) are on board or have landed, under a penalty, for omission or for false declaration, of 20*l.*, and 10*l.* for each alien omitted. Every foreigner on landing is required immediately to exhibit any passport in his possession to the chief officer of customs at the port of debarkation, and to state to him, either verbally or in writing, his name, birth-place, and the country he has come from, under a penalty, for neglect or refusal, of 2*l.* The officer of customs is to register this declaration, deliver a certificate to the alien, and transmit a copy of the declaration to the secretary of state. On leaving the country the alien is required to transmit to the secretary of state the certificate granted him on landing. The act does not affect foreign ministers or their servants, nor aliens under fourteen years. The proof of non-alienage lies on the person alleged to be an alien. Under the former act aliens were required to present themselves at the Alien-office; but this is no longer necessary.

The registration clause is generally disregarded by foreigners, and is never enforced, for there is no provision in the act for recovering the penalty. In 1842, out of 11,600 foreigners who were officially reported to have landed, 6084 only registered according to the act; but in the same year, out of 794 who landed at Hull, only one registered; at Southampton, out of 1174, not one; and of those who landed at London, not one-half. At Liverpool no return was kept of the number of foreigners who landed, and there was no instance of one who registered. There are two alien clerks at the port of London, and one at Dover, but at other ports the business is done by the officers of customs. In the session of 1843 a bill was introduced for increasing the facilities afforded for the denization and naturalization of foreigners; but it met with opposition from the government, and was thrown out without a division.

Under the Act 7 Geo. IV. c. 54, the number of foreigners who arrived and departed during the year was ascertained; but it is said that the papers have been destroyed. The returns under the census

of 1841 do not distinguish foreigners from British subjects born in foreign parts. The total number of foreigners and British subjects born abroad resident in Great Britain on the 6th of June, 1841, was 44,780, of whom 38,628 resided in England, and 19,931 of this number were returned in the counties of Middlesex and Surrey. The number of foreigners naturalized does not on an average exceed seven or eight a year, and the number who apply for letters of denization does not exceed twenty-five.

The same classes of persons who are aliens, according to the law of England, are aliens according to that of Scotland, and the statute law on the subject extends to that part of the empire. When an alien resident in Scotland wishes to acquire the privileges of a British subject, the same forms which, as above described, are applicable to England, are gone through with the same effect. They are consistent with the constitutional doctrine of the separate kingdom of Scotland, in which, anterior to the Union, it appears that letters of denization could give a portion, but an act of parliament only could communicate the whole of the privileges of a born subject of the crown. The institutional writers maintain that an alien cannot hold any kind of heritable property in Scotland, but in the books there are only two cases on the subject, and in one the general question was evaded; in the other an alien was found not to have a sufficient title to pursue a reduction of a conveyance of an estate. (*Leslie v. Forbes*, 9th June, 1749, M. 4636.) If the rule that aliens cannot hold heritage were strictly interpreted, it would affect property which all classes of persons are in the practice of holding in Scotland without molestation, but in the general case it would be difficult to find a form in which an alien's title could be brought in question. It is questioned whether an alien in Scotland who holds the statutory qualification may vote for a member of the House of Commons. The sheriffs, who are judges in the registration courts, have given conflicting judgments on this point.

The following are the laws as to aliens in France and the United States of North America, two countries with which Eng-

lishmen are more closely connected than any other:—

A child born in France, of foreign parents, may, within one year after he has attained the age of twenty-one, claim to be a Frenchman; if he is not then resident in France, he must declare his intention to reside there, and he must fix his residence there within one year after such declaration. An alien enjoys in France the same civil rights as those which Frenchmen enjoy in the country to which the alien belongs; but he enjoys the right of succession in France, although this right may not be granted to French citizens in his own country. An alien is allowed by the king's permission (*ordonnance du roi*) to establish his domicile in France; and so long as he continues to reside there, he enjoys all civil but not political rights; but this enjoyment ceases immediately the domicile is lost. After an uninterrupted residence during ten years, by permission of the king an alien may become naturalized. (*Code Civil*, liv. 1, tit. 1. s. 9.) A foreigner can buy and hold land in France without obtaining any permission from the crown or legislature.

Upon the recognition of the independence of the United States of North America by the treaty of Paris, 1783, the natural-born subjects of the king of England who adhered to the United States became aliens in England; and it was decided that they became incapable of inheriting lands in England. It had been previously decided in America that natives of Great Britain were aliens there, and incapable of inheriting lands in the United States. Kent defines an alien to be "a person born out of the jurisdiction of the United States;" but this definition is not sufficiently strict, for the son of an alien, which son is born in the United States, is also an alien.

Congress has several times altered the law respecting naturalization, but chiefly as to the period of previous residence. In 1790 only two years' residence was required; in 1795 the term was prolonged to five years; and in 1798 to fourteen years. In 1802 the period of five years was again adopted, and no alteration in this respect has taken place. The benefits



of naturalization have always been confined to "free white persons;" persons of mixed blood are excluded, as well as the African and other pure races, whether black or copper-coloured. At what point a person of mixed blood could claim naturalization is doubtful. By an old law of Virginia, which was not repealed up to a recent period, a person with one-fourth of negro blood is deemed a mulatto. An alien in the United States cannot have full and secure enjoyment of freehold of land; and if he does, the inheritance escheats. He can neither vote at elections nor hold public offices. Two years at least before he can obtain the privileges of a natural-born citizen he must appear in one of certain courts, or before certain officers, and declare on oath his intention to become a citizen of the United States, and to renounce his allegiance to his own state or prince. When the two years have expired, and if the country to which the alien belongs is at peace with the United States, he is next required to prove to the court, by his oath as well as otherwise, that he has resided five years at least in the United States, and one year in the state where the court is held; and he must show that he is attached to the principles and constitution of the United States, and is of good moral character. The court then requires that he should take an oath of fidelity to the constitution, and likewise an oath by which he renounces his native allegiance. He must also renounce any title or order of nobility, if he has any. The children of persons naturalized according to this form, if they were minors at the time, are deemed citizens if they are then dwelling in the United States. If an alien dies in the interval between having taken the preliminary steps towards his naturalization and the time of his admission, his widow and children become citizens. If an alien resided in the United States previously to the 18th of June, 1812, the preliminary notice of two years is not necessary, nor if he be a minor under 21 and has resided in the United States during the three years preceding his majority. In the case of an alien who has arrived in the United States after the peace of 1815, it is re-

quired that he should not at any time have left the territory during the five years preceding his admission to citizenship. A naturalized alien immediately acquires all the rights of a natural-born citizen, except eligibility to the office of President of the United States and of governor in some of the states. A residence of seven years, after naturalization, is necessary to qualify him to be a member of Congress. (*Kent's Commentaries*, vol. ii. p. 50-75.)

In 1804 Congress passed an act supplementary to the act of 1802, which contains a clause respecting the children of American citizens born abroad, but it applies only to the children of persons who then were or had been citizens; and Kent remarks (*Commentaries*, vol. ii. p. 53) that the rights of the children of American citizens born abroad are left in a precarious state; and in the lapse of time there will soon be no statute which will be available, in which case the English common law will be the only principle applicable to the subject.

Before the adoption of the present constitution of the United States, the several states had each the privilege of conferring naturalization. Each state can still grant local privileges. There is a considerable diversity in the laws of different states respecting aliens. By a permanent provision in the state of New York, an alien is enabled to take and hold lands in fee, and to sell, mortgage, and devise (but not to demise and lease the same), provided he has taken an oath that he is a resident of the state, and has taken the preliminary steps towards becoming a citizen of the United States. There are similar provisions in several of the other states. In New York resident aliens holding real property are liable to be enrolled in the militia, but they are not qualified to vote at any election, of being elected to any office, or of serving on a jury. In North Carolina and Vermont the constitution provides that every person of good character who comes into the state and settles, and takes an oath of allegiance, may hold land, and after one year's residence he becomes entitled to most of the privileges of a natural-born citizen. In Connecticut the superior

court, on the petition of any alien who has resided in the state six months, has the power of conferring upon him the same privileges, in regard to holding land, as if he were a natural-born citizen. In Pennsylvania aliens may purchase lands not exceeding 5000 acres, and hold and dispose of the same as freely as citizens. In Georgia aliens can hold land, provided they register their names in the Superior Court. No alien can act as executor or administrator in this state. In Kentucky, after a residence of two years, an alien can hold land. In Indiana, Missouri, and Maryland the disqualification of an alien holding land is done away with on his giving notice of an intention to become a citizen. Most, if not all, of the state legislatures are in the habit of granting to particular aliens, by name, the privilege of holding real property. ("Law relating to Aliens in United States," in *Boston Almanac*, 1835.)

In the States generally, perhaps in all, as in England, the alienage of a woman does not bar her right of dower.

The following information is abstracted from evidence given by Harvey Gem, Esq., before the Select Committee on aliens, in 1843, and the information was stated to have been obtained from the ambassadors or ministers of the different Powers in London:—

In Prussia, from the moment when an alien becomes a resident and places himself under the protection of the laws, he enjoys the same rights as a natural-born subject, and not only has he a right to vote in the election of members to the Provincial States, but he is also eligible himself as a member.

In Saxony, by a law passed in 1834, an alien may acquire the privileges of a natural-born subject by right of domicile, granted by the local authorities of each district, or by the purchase of real property, and in towns by obtaining the freedom of the corporation. In the two latter cases, the alien must have been in possession of his real property or of his freedom for five years, during which period he must have resided in the place where the property is, or in the town of which he has obtained the freedom. The right of voting, eligibility as a repre-

sentative of the Chambers of the Kingdom, &c., depend upon the nature and value of the real property acquired, whether a manor, a house in a town, &c.

In Bavaria aliens can possess landed property, without the condition of residence, but they are liable to the duties which attach to the property. Naturalization is obtained either by marriage of a foreign woman with a Bavarian, by domicile and renouncing foreign allegiance, or by royal decree; but a residence of six years is necessary before the full citizenship can be obtained. The privileges of an alien in Bavaria depend in some degree on the policy of the state of which he is a subject towards foreigners in general or Bavarians in particular.

In Würtemberg an alien who wishes to be naturalized, first purchases landed property in or near the place where he intends to settle, by which he obtains the consent of the local authorities to reside among them (*bürger-recht*). These conditions having been fulfilled and the sanction of government obtained, the alien acquires the *Staats-bürger recht*, which gives him all the privileges of a natural-born subject, and with them its obligations, as liability to the military conscription, &c. The *bürger-recht* may give an alien all the municipal rights of a citizen in a town, while, as respects the *Staats-bürger recht*, which makes him a citizen of the state, he may still be an alien.

In Hanover naturalization is acquired in one or other of the following ways: by marriage of a foreign woman with a Hanoverian subject; by the adoption by a Hanoverian of a foreigner as his child; by holding any office under the government; by becoming a member of a commune; by the purchase of a residence or freehold in any commune; by the authority of the State, independently of the will of the commune; and by a residence of five consecutive years in any commune with the express approbation of the bailiff or mayor—the conditions in the two last cases being the possession of sufficient means of subsistence and an irreproachable character.

In Austria a residence of ten years is

sufficient in all cases to obtain naturalization. Whoever holds any office, either civil or military, under the crown, is thereby naturalized. Merchants or manufacturers who come to settle in the country with their families can obtain naturalization at once, if they are of good reputation and not in needy circumstances. Naturalization confers, without any exception, all the rights and privileges of natural-born subjects.

The Act of the German Confederation, Art. 18, gives to every German the right of holding civil and military offices in the different states of the Confederation.

In Denmark, every foreigner who settles there with the intention of remaining, and who owns land of the value of 30,000 crowns, or houses in the towns of the value of 10,000 crowns, or a capital of 20,000 crowns in trade, acquires by that alone the right of demanding letters of naturalization. Children born in Denmark of foreign parents, and persons naturalized, are eligible to all public offices, with one exception, which is this, a naturalized foreigner does not become eligible as a deputy of the provincial States until he has resided for five years in the European dominions of Denmark, and renounced his foreign allegiance.

In the Hanseatic towns naturalization is acquired in the following manner:—In Lübeck and its territory, any person of respectability, especially after a prolonged residence, is admitted as a citizen without difficulty, on showing, if required, that he has sufficient means of subsistence. Letters of naturalization confer all the rights which natural-born subjects enjoy. In Hamburg an alien cannot hold landed property, but any persons taking up their *bonâ fide* residence there may obtain letters of naturalization on payment of a moderate sum (a few pounds, it is stated), upon which they enjoy all the rights of native citizens, with the exception of not being eligible to the order of the *bürger-schaft*; but the restrictions in this case apply only to age and some other qualifications, which are equally applicable to native citizens. No business can be transacted by foreigners, until they have obtained the privilege of citizenship, and become members of some one of the guilds.

Any foreigner may become a citizen by purchase. Jews cannot become citizens. In Bremen an alien obtains the rights of citizenship for a money payment, and by becoming a member of a commune. In Frankfort naturalization is obtained by gift for public services, by marriage, or by purchase, if the person desirous of becoming a citizen can give satisfactory references as to character, station, and property.

In Sardinia the power of conferring naturalization rests entirely with the king, and is never refused on any *bonâ fide* application: a naturalized person enjoys all the privileges of a natural-born subject.

In Portugal an alien of not less than twenty-five years of age can obtain letters of naturalization after two years' residence, and provided he has the means of subsistence. The two years' residence is dispensed with if the alien has married a Portuguese woman; or has opened or improved a public road; embarked money in trade; improved any branch of arts; introduced any new trade or manufacture; or otherwise performed some service of public utility.

In Belgium an alien cannot purchase or hold land. There are two kinds of naturalization, the *petite* naturalization and the *grande* naturalization. The first gives the alien some advantages, as the right to sue, &c.; and the second, which is an act of the legislature, confers political privileges in addition.

In Switzerland naturalization is conferred in some cantons by the legislature, and in others by the executive. In Tessin a naturalized foreigner can only enjoy the full rights of citizenship after five years have elapsed from the date of his naturalization. In Thurgau no one can hold any office under the government unless he has been a burgess of the canton at least five years. In Berne, Zürich, Vaud, Geneva, and most of the cantons, an alien obtains the full citizenship from the date of his naturalization.

In Russia no foreigner, who does not become a "perpetual subject," can enjoy the rights and privileges attached to the guild of merchants. The commercial rights belonging to merchants are enjoyed in their character as guests, or as

itinerant merchants. A foreigner who imports goods must sell them to Russians only.

ALIMONY (from the Latin *alimonium* or *alimonia*, a word which is used by the classical writers, and signifies "maintenance or support"). By the law of England a wife is presumed to have surrendered the whole of her property to her husband upon marriage, and consequently to be entirely dependent upon him for her future maintenance. Upon this principle, it is reasonable that if a separation takes place, the wife should have a portion of her husband's estate allotted to her for her subsistence; and this allotment, when made by the ecclesiastical courts, is termed "alimony." The right of a wife to this provision depends, however, entirely upon the truth of the presumption, that she has not sufficient means, independently of her husband, to support her in her appropriate station in life; for in cases where she has a separate and sufficient income beyond the husband's control, the wife is not entitled to alimony.

Alimony, in common with other subjects of matrimonial litigation, falls properly under the exclusive cognizance of the ecclesiastical courts; for though courts of equity have not unfrequently decreed a separate maintenance resembling alimony, yet their interference in such cases seems to have proceeded upon the ground of enforcing some express agreement between the parties, and is not founded upon the right of the wife to a portion of her husband's estate, resulting from the general principle above stated. In the ecclesiastical court, the allotment of alimony is incidental to a decree of divorce *a mensa et thoro* upon the ground of cruelty or adultery on the part of the husband. It may be either temporary or permanent: in the first case, while the proceedings in the suit for a divorce are depending, the court will, generally speaking, allot alimony to the wife *pendente lite*, or during the continuance of litigation; and in the second case, when a decree of divorce has been obtained on either of the above grounds, a permanent provision may be given to her; in both cases the allotment is made in the form of a stipend for her maintenance from year to year, and is

proportionate to the estate of the husband.

The amount of alimony depends wholly upon the discretion of the court, which is exercised according to the circumstances of each particular case. In forming their estimate in this respect, the courts have held that, after a separation on account of the husband's misconduct, the wife is to be alimoned as if she were living with him as his wife; they attend carefully to the nature as well as to the amount of the husband's means, drawing a distinction between an income derived from property and an income derived from personal exertion. The station in life of both parties, and the fortune brought by the wife, are also considered; and much stress is laid upon the disposal of the children and the expense of educating them. The conduct of the parties forms also a very material consideration: where the wife has eloped from her husband, or where the sentence of divorce proceeds upon the ground of her adultery, the law will not compel the allowance of alimony. In assigning the amount of alimony in order to discourage vexatious litigation, as well as upon the just principle that innocence of imputed misconduct is to be presumed until the contrary is proved, alimony during the continuance of a suit is always much less in amount than permanent alimony. Thus in the former, the proportion usually allowed is one-fifth of the net income of the husband; in the latter, after a charge of cruelty or adultery on the part of the husband has been established, a moiety of the whole income is frequently given. This seems to be the result of numerous cases in which the amount of alimony has been decided; but no general rule can be laid down upon this subject.

The assignment of alimony during the continuance of a suit will not discharge the husband from liability for his wife's contracts; but when the court has allotted her a permanent maintenance upon the termination of a suit, the wife is liable for her own contracts, and the husband is wholly discharged from them. On this ground, and with a view to the protection of the husband, the ecclesiastical court has sometimes granted alimony in cases

where the wife, by her own profligacy or extravagance, has thrown enormous expense on her husband, and has thereby forfeited her equitable title to a subsistence from his estate.

The equivalent in Scottish law to the term alimony is aliment or alimentary allowance. Allowances coming under this character, or, as they may generally be described, periodical payments sufficient only for the bare support of the recipient, and made to him in the understanding that he requires such an allowance for his support, are not attachable by the process of arrestment [ARRESTMENT]. A wife is entitled to aliment from her husband when she is deserted by him, when she is judicially separated from him, and during the continuance of an action of divorce, whether at his or her own instance. She has no right to aliment in the case of a voluntary contract of separation. It is a general principle of the law of Scotland, that a person who by disease or otherwise is unable to support himself, is entitled to an alimentary allowance from the nearest relation he can prove capable of affording it, but the House of Lords have shown a disposition to restrict the operation of this principle. The father of an illegitimate child is bound to make an alimentary allowance in its favour, the amount and the time during which it is to continue depending on his rank and fortune.

ALLEGIANCE, or LIGEANCE, is defined by Coke thus:—"Ligeance, à ligando, is the highest and greatest obligation of duty and obedience that can be. Ligeance is the true and faithful obedience of a liegeman or subject to his liege lord or sovereign. Ligeantia est vinculum fidei: ligeantia est legis essentia." The notion of Ligeance, or Allegiance, is that of a bond or tie between the person who owes it and the person to whom it is due. After this definition, Coke gives a tabular view of the various kinds or degrees of allegiance (*Co. Lit.* 129 A). Allegiance is due from those who are natural-born subjects, and also from denizens and those who have been naturalized. A natural-born subject is called a natural liegeman, and the king is called his natural liege lord.

The allegiance of a subject, according to the law of England, is permanent and universal; he can, by no act of his own, relieve himself from the duties which it involves; nor can he by emigration, or any voluntary change of residence, escape its legal consequences.

An alien owes a local and temporary allegiance so long as he continues within the dominions of the king; and he may be prosecuted and punished for treason.

A usurper, in the undisturbed possession of the crown, is entitled to allegiance; and, accordingly, our history furnishes an instance in which a treason committed against the person of Henry VI. was punished in the reign of his successor, even after an act of parliament had declared the former a usurper.

An oath of allegiance has, from the earliest period, been exacted from natural-born subjects of these realms; but its form has undergone some variations. In its ancient form, the party promised "to be true and faithful to the king and his heirs, and truth and faith to bear of life and limb and terrene honour, and not to know or hear of any ill or damage intended him without defending him therefrom." The modern oath, enforced by statute since the Revolution, is of more simple form, and is expressed in more indefinite terms:—"I do sincerely promise and swear that I will be faithful and bear true allegiance to her majesty Queen Victoria."

The alteration of the form has not varied the nature of the subject's duty, which is, indeed, owing from him antecedently to any oath, and although he may never have been called upon to take it. The oath is imposed by way of additional security for the performance of services which are due from the subject from the time of his birth. The king also, according to the old law writers, is said to be bound to protect his liegeman or subject, because allegiance is a reciprocal tie (*reciprocum ligamen*); the protection of the king is assigned as the reason or foundation of the liegeman's duty. This language is by no means exact; but it seems to show that the notion of a contract is involved in the theory of allegiance, at least as it is explained by some law

writers. The king can, by proclamation, summon his liegemen to return to the kingdom, an instance of which occurred in 1807, when the King of England declared, by proclamation, that the kingdom was menaced and endangered, and he recalled from foreign service all seamen and sea-faring men who were natural-born subjects, and ordered them to withdraw themselves and return home, on pain of being proceeded against for a contempt. It was further declared that no foreign letters of naturalization could, in any manner, divest his natural-born subjects of their allegiance, or alter their duty to their lawful king.

By the old law of the land, every male subject of the age of twelve years (with certain exceptions) was bound to take the oath of allegiance when summoned to the courts called Leets and Tourns; and a variety of statutes, from the reign of Elizabeth down to the present century, have expressly required it from public functionaries and other persons before they enter upon their respective duties, or practise in their several professions. By 1 George I. c. 13, two justices of the peace, or other commissioners appointed by the king, may tender the oath to any person suspected of disaffection.

A violation of allegiance is treason, the highest offence which a subject can commit. [TREASON.]

The law of England permits a foreigner to be naturalized here, by which naturalization the foreigner owes allegiance to the British crown. If, as is nearly always the case, he still continues to owe allegiance to his former state or sovereign, it may happen that his new allegiance may, under certain circumstances, as for instance in time of war, place him in a difficult situation. This, however, is a matter that concerns himself mainly: the state which receives him as a subject, is willing to do so, if he will accept the terms of naturalization.

Those who wish to become more fully acquainted with this subject and with the distinctions between *liege fealty*, or allegiance, and *simple fealty*, or fealty by reason of tenure, may consult Hale's *Pleas of the Crown*, vol. i. p. 58, *et seq.*, and Mr. Justice Foster's *Discourse on High Treason*.

It is not yet absolutely settled whether a citizen of the United States of North America can divest himself of his allegiance. The law of the United States allows foreigners to be naturalized, but first requires them to abjure their former allegiance, and does not require any evidence that the state or sovereign to whom the foreigner owes allegiance has released him from it. But it cannot be inferred that, because the United States allow foreigners to become American citizens, they also allow their own citizens to divest themselves of their allegiance. The vague expressions used in some of the State Constitutions, that the citizens have a natural and inherent right to emigrate, do not decide the question, even if the words mean that a citizen can renounce his allegiance to his State; for an American citizen owes allegiance to the United States primarily, as it is said. The best opinion is, that in the matter of allegiance the rule of the English common law prevails in the United States, and that an American citizen therefore cannot renounce his allegiance to the United States without their expressed consent, which can be given in no other way than by a law. The cases relating to this subject which have been brought before the federal courts of the United States are discussed in Kent's 'Commentaries,' vol. ii. 4th edition.

ALLIANCE. [TREATY.]

ALLIANCE, HOLY. [HOLY ALLIANCE.]

ALLIANCE, TRIPLE. [TRIPLE ALLIANCE.]

ALLODIUM, or ALO'DIUM, property held in absolute dominion, without rendering any service, rent, fealty, or other consideration whatsoever to a superior. [UDAL TENURE.] It is opposed to Feodum or Fief [FIEF; FEUDAL SYSTEM], which means property the use of which is bestowed by the proprietor upon another, on condition that the person to whom the gift is made shall perform certain services to the giver, upon failure of which, or upon the determination of the period to which the gift was confined, the property reverts to the original possessor. Hence arises the mutual relation of lord and vassal.

When the barbarian tribes from the northern parts of Europe overran the Western Roman empire, in the fifth and sixth centuries, they made a partition of the conquered provinces between themselves and the former possessors. The lands which were thus acquired by the Franks, the conquerors of Gaul, were termed allodial. These were subject to no burden except that of military service, the neglect of which was punished with a fine (called *Heribannum*) proportioned to the wealth of the delinquent. They passed to all the children equally, or, in default of children, to the next of kin of the last proprietor. Of these allodial possessions there was a peculiar species denominated *Salic*, from which females were excluded. Besides the lands distributed among the nation of the Franks, others termed *fiscal* lands (from *Fiscus*, a word which, among the Romans, originally signified the property which belonged to the emperor as emperor) were set apart to form a fund which might support the dignity of the king, and supply him with the means of rewarding merit and encouraging valour. These, under the name of *benefices* (*beneficia*), were granted to favoured subjects, upon the condition, either expressed or implied, of the grantees rendering to the king personal service in the field. It has been supposed by some writers, that these *benefices* were originally resumable at pleasure, that they were subsequently granted for life, and finally became hereditary. But there is no satisfactory proof of the first stage in this progress. (Hallam, *Middle Ages*, vol. i. chap. 2, 8th ed.)

From the end of the fifth to the end of the eighth century, the allodial tenures prevailed in France. But there were so many advantages attending the beneficiary tenure, that even in the eighth century it appears to have gained ground considerably. The composition for homicide, the test of rank among the barbarous nations of the north of Europe, was, in the case of a king's vassal, treble the amount of what it was in the case of an ordinary free-born Frank. A contumacious resistance on the part of the former to the process of justice in the king's courts, was passed over in silence; while

the latter, for the same offence, was punished with confiscation of goods. The latter also was condemned to undergo the ordeal of boiling water for the least crimes; the former, for murder only. A vassal of the king was not obliged to give evidence against his fellow-vassal in the king's courts. Moreover, instead of paying a fine, like the free allodialist, for neglect of military service, he had only to abstain from flesh and wine for as many days as he had failed in attendance upon the army. (Montesquieu, *Esprit des Loix*, lib. xxxi.)

The allodial proprietors, wishing to acquire the important privileges of king's vassals, without losing their domains, invented the practice of surrendering them to the king, in order to receive them back for themselves and their heirs upon the feudal conditions. When the *benefices* once became hereditary, the custom of what is called *subinfeudation* followed; that is to say, the possessors granted portions of their estates to be holden of themselves by a similar tenure. This custom began to gain ground even in the eighth century; but the disorders which ensued upon the death of Charlemagne in the ninth century, paved the way to the establishment of the feudal system upon a more extended basis. The vast empire which had been held together by the wisdom and vigour of one man, now crumbled into pieces. The provincial governors usurped the authority and tyrannized over the subjects of his feeble descendants. The Hungarians, a tribe that emerged from Asia at the latter end of the ninth century, spread terror and devastation over Germany, Italy, and part of France. The Scandinavian pirates, more commonly known by the name of Normans, infested the coast with perpetual incursions. Against this complication of evils, the only defence was in the reciprocity of service and protection afforded by the feudal system. The allodial proprietor was willing, upon any terms, to exchange the name of liberty for the security against rapine and anarchy which a state of vassalage offered. In the course of the tenth and eleventh centuries allodial lands in France became for the most part feudal; that is, either they were sur-

rendered by their owners, and received back as simple fiefs, where the owner was compelled to acknowledge himself the *man* or vassal of some lord, on the supposition of an original grant which had never been made, or as *fiefs de protection*, where the submission was expressly grounded upon a compact of mutual defence. Similar changes took place in Italy and Germany, though not to the same extent. But in most of the southern provinces of France, where the Roman law prevailed, the ancient tenure always subsisted, and lands were generally presumed to be allodial unless the contrary was shown. And in Germany, according to Du Cange (*Gloss. "Barones"*) a class of men called *Semper Barones* held their lands allodially. With respect to England, it has always been a question whether the feudal system was established there before or after the Norman Conquest. [FEUDAL SYSTEM.] At present allodial possessions are unknown in England, all land being held mediately or immediately of the king. The name for the most absolute dominion over property of this nature is a Fee (Feodum), or an estate in fee, a word which implies a feudal relation. Hence it is, that when a man possessed of an estate in fee dies without heirs, and without having devised his property by will, the estate escheats, or falls back to the lord of whom it was holden: or, where there is no intermediate lord, to the king as lord paramount. The term allodium is also sometimes applied to an estate inherited from an ancestor, as opposed to one which is acquired by any other means. (Spelman, *Gloss. "Alodium."*)

The Latinized forms of this word are various:—Alodis, Alodus, Alodium, Alaudum, and others. The French forms are Aleu, Aleu Franc or Frank Aleu, Fravelond, Franc-aloy, and Franc-aleuf. In many old charters Alodum is explained by Hereditas, or heritable estate. But it is very difficult to collect any theory from the numerous passages in which the word occurs which shall satisfactorily explain its etymology. (Du Cange, *Gloss. "Alodis;"* Spelman, *Glossarium.*)

The view here taken of the nature of allodial lands, and of the change of this property into feudal tenures, is not free

from great difficulties. There is a very elaborate article on allodial land in the *Staats-Lexicon* of Rotteck and Welcker, under the head "Alodium."

ALLOTMENT SYSTEM, the practice of dividing land in small portions for cultivation by agricultural labourers and other cottagers at their leisure, and after they have performed their ordinary day's work. There are some instances of this plan having been resorted to about the close of last century, but it is only since 1830 that its adoption has become common. In 1830 the agricultural districts in the south of England were almost in a state of insurrection. The labourers went about in bands, destroying thrashing-machines, and demanding higher wages; and at night the country was lighted up by incendiary fires. Under the impulse of fear the farmers increased the wages of the labourers, but on the suppression of the disturbances they generally returned to the old rates. The season of alarm did not, however, pass away without some attempts being made to improve the condition of the agricultural labourer, and the extension of the allotment system was the most general mode by which an attempt was made to accomplish this object. A society, called the Labourers' Friend Society, was established in London, to promote the allotment system, and to circulate information respecting it. Allotments (garden-allotments, or field-gardens, as they are sometimes termed) are now common in all the agricultural counties in England; but they are nowhere universal. In East Somerset they are to be found in about fifty parishes; and the quantity of land devoted to allotments is said to be equal to the demand. In several of the northern and midland counties the allotment system is promoted, and in some degree superintended, by a society called the "Northern and Midland Counties Artisans' Labourers' Friend Society." The number of acres under allotment, according to the report of this Society, in June, 1844, was 1082. Allotments are also found in the neighbourhood of several large towns, and the proprietors of factories have in many instances granted allotments to their workmen; but in both



these cases the land is cultivated rather as a recreation than with a view of adding to the means of subsistence. At Nottingham land belonging to the corporation is divided into about four hundred gardens, which let at the rate of  $1\frac{1}{2}d.$  a yard, or  $25l.$  per acre: the greater number of these gardens have been cultivated for about thirty years. Where the tenant is an agricultural labourer, the main object is to increase his resources, and thus enable him to maintain himself without assistance from the poor's rate. There seems to be good authority for stating that the allotment system has been successful in this object; and that it has not only diminished the incentives to crime, but has encouraged habits of sobriety and industry, and led to a general elevation of character. Of 3000 heads of families holding allotments of land in West Kent, not one was committed for any offence during the years 1841 and 1842. In the parish of Hadlow, Kent, there were 35 commitments in 1835, and on the allotment system being introduced in 1836 the commitments were reduced in 1837 to one, and from 1837 to 1843 there had been only one. About 15 of those who were committed in 1835 became holders of allotments, and up to June, 1843, no cause of complaint had arisen against any of them. (Evidence of Mr. Martin: *Report on Allotments of Land*.) Of 443 tenants of allotments under Mrs. Davies Gilbert, in Sussex, there was only one person convicted in the course of thirteen years. (*Communication from Mrs. Davies Gilbert, April, 1844*.) Similar testimony might be collected from various parts of the country where the allotment system prevails. The punctuality with which the rents are paid by the tenants proves how highly the labourers value their patches of land: they scarcely ever fail to bring the money at the appointed time. Among Mrs. Davies Gilbert's numerous tenantry only three have failed to pay their rent in the course of fourteen years; but in each case the size of the allotment (five acres) must be considered as taking it out of what may fairly be considered the allotment system. Captain Scobell, who was one of the earliest, and is now one of the

most extensive, promoters of the system, estimates the loss from non-payment of rent as one-fourth, and certainly not more than one-half, per cent.

The principal obstacle to the progress of the allotment system is the difficulty of obtaining land; but the landowners are much more favourable to it than the farmers, whose objections are—that the time which the allotment requires interferes with the labourers' ordinary employment; that it makes them too independent, and less anxious to obtain work and, thirdly, they object that it affords a cloak for theft. These objections have frequently been entirely given up after the farmers had become practically acquainted with the operation of the system.

The principal rules which experience has shown to be best calculated to render the allotment system successful are briefly as follows:—As it is not intended that the tenant should look upon his plot of ground as a substitute for wages, but merely as a small addition to this main resource, its size should not be greater than can be cultivated during the leisure or spare time of the labourer or his family. The size of the allotment is determined by the number of the tenant's family, or the quality of the land, and in some cases by the quantity of manure which can be collected. The maximum size of allotments, according to Captain Scobell, should not exceed 50 or 60 rods, and 20 rods are sufficient for a person just settled and without a family. The size of Mrs. Davies Gilbert's allotments are as follows:—255 less than a quarter of an acre; 108 quarter-acres; 2 contain sixty rods each; 13 are half-acres; 2 are three-quarter acres; 22 are one-acres; and 16 others contain two, four, and five acres; and one is of nine acres. Some persons state that a man in full employ can manage an allotment of a quarter of an acre, or 40 rods; but others are of opinion that 20 rods are quite enough. In one district the labourer may not be fully employed by the farmer; and in another, under a better system of management, he may be employed at piece-work to the full extent of his powers; and hence the difference of opinion on this point. The

allotment should be situated as near as possible to the tenant's cottage. Captain Scobell says that the distance should never exceed a mile, as the labourer will be fatigued by a longer walk, and it will be inconvenient to send so far for vegetables for daily use. In Kent there are allotments which are two or three miles from the labourer's dwelling, but this is a proof that employment is precarious, and that on the whole his condition is not good. A much higher rent can be obtained for small allotments under garden tillage, than for land in undivided tenancy; and it is but reasonable that the owner of a hundred acres divided into half-acre allotments, and having two-hundred tenants instead of one, should receive additional rent in respect of his additional trouble in collecting the rent, looking after his property, and other expenses that are incident to the division of the land. Those who are conversant with the system say that if the rent is one-third higher, the difference is not unreasonable; but as allotments are at present granted as a matter of favour, they are not set at a rack-rent. It is usual for the landlord to include tithes, parochial and other rates, in the rent, in order to save trouble, and to prevent the tenant being unexpectedly and frequently called upon for money payments. The rent of 137 acres belonging to Mrs. Davies Gilbert, divided into 419 allotments, is 428*l.* 8*s.* 5½*d.*, or nearly three guineas per acre, which includes rates, tithes, and taxes, but is exclusive of houses and buildings, which are paid for separately. The rents vary from 6*s.* up to 8*l.* an acre. A form of agreement, which is usually signed by allotment tenants, embodies rules for the management of the land, and fixes other conditions for their observance. Spade-culture is insisted upon, and the use of the plough is prohibited; also underletting and working on Sunday. There are instances in which attendance at the parish church is enforced; and in other cases it is merely stipulated that there shall be attendance at some place of worship. The allotment is usually forfeited for non-payment of rent, gross misconduct, commitment for any crime, or wilful neglect of the land. A

particular rotation of crops is sometimes required in the agreement. The growth of wheat is not allowed in some cases. Where it is permitted, it may probably be safely assumed that in that particular district the labourer is worse off than usual. Some recommend that on a half-acre one half should be in wheat, and the other half in potatoes; and it is assumed that other vegetables are grown in the garden attached to the labourer's cottage. Captain Scobell thinks it inadvisable to exclude any one from holding an allotment on account of previous bad character, as there is a chance of his being reclaimed. Becoming permanently a pauper is a fit ground for exclusion; but when the tenant receives casual relief on account of sickness or accident, he is not excluded. So long as the tenant observes the conditions of his agreement, it is found useful to stipulate that he shall on no other account be ejected from his land.

There seems to be no doubt that the absolute produce of the soil when cultivated in small allotments is greater than the same land would produce under the ordinary course of tillage by farmers. A much larger quantity of manure is used; in some cases, four times as much as farmers are enabled to put upon their land, and a single rod is frequently made to produce vegetables sufficient for the consumption of a labourer's family for six months; but if every labourer had an allotment, the quantity of manure collected could not be so great as it is at present. The disposable produce per acre of land in large farms is obviously much greater than when the same quantity of land is divided into small holdings.

Captain Scobell estimates the average value of an allotment at 2*s.* per week, or about 5*l.* per year, and that during the year twenty days' labour is required. The profit is equal to ten weeks' labour at wages of 10*s.* per week. According to another estimate, the gross profit of half an acre is calculated at 19*l.* The produce consists of twelve bushels of wheat at 7*s.*, and six hundredweight of bacon at 6*d.* per lb.; and something is set down as the value of the straw. The rent, seed, and other expenses, it is said, will

amount to 3*l.* 10*s.*, leaving a profit (without deducting the value of the labour) of 15*l.* 10*s.*, which is equal to 6*s.* a week for a whole year. Such an allotment as the one here alluded to will require about thirty days' labour in the course of a year; but it is necessary that the chief part of this labour should be given between Lady-day and Michaelmas. Supposing that there are a million families in England and Wales who are in the same circumstances as the tenants of existing allotments, and that four families had an acre amongst them, the whole quantity of land in allotments would be 250,000 acres, or nearly 400 square miles, which is one-third more than the area of Middlesex, and about the 128th part of the area of England. This would be about one forty-third of the arable land in England. At three guineas an acre the rent would amount to 787,500*l.*, and the value of the produce, according to Captain Scobell, would be about 5,000,000*l.*

From the Anglo-Saxon period to the reign of Henry VII., nearly the entire population of England derived their subsistence immediately from the land. The great landowner consumed the produce of his demesne, which was cultivated partly by prædial slaves and by the labour of the tenants and cottiers attached to the manor. These tenants were the occupiers of small farms, and paid their rent in kind or in services, or in both. The cottagers had each a small croft or parcel of land attached to his dwelling, and the right of turning out a cow or pigs, or a few sheep, into the woods, commons, and wastes of the manor. While working upon the lord's demesne, they generally received their food. [VILLEIN and VILLENAGE.] The occupation of the land on a farm of one hundred and sixty acres, called Holt, in the parish of Clapham, Sussex, has been traced at various dates between the years 1200 and 1400. During the thirteenth and fourteenth centuries, this farm, which is now occupied by one tenant, was a hamlet, and there is a document in existence which contains twenty-one distinct conveyances of land in fee, described to be parcels of this hamlet. In 1400 the

number of proprietors began to decrease, by the year 1520 it had been reduced to six; in the reign of James I. the six were reduced to two; and soon after the restoration of Charles II., the whole became the property of one owner, who let it as a farm to one occupier. (*Quarterly Review*, No. 81, p. 250.) The history of the parish of Hawsted in Suffolk, by Sir T. Cullum, shows a similar state of things with regard to the occupancy of land. In the reign of Edward I. (1272-1307) two-thirds of the land in the parish, which contains 1980 acres, were held by seven persons, and the remaining third, or 660 acres, was held by twenty-six persons, which would give rather more than twenty-five acres to each holder. The number of tenants who did suit and service in the manorial court at a somewhat later period was thirty-two; and one tenant was an occupier of only three acres. In the reign of Edward I. there were fifty messuages in the parish; in 1784 there were fifty-two; in 1831 there were 62, inhabited by eighty-eight families; and in 1841 there were one hundred inhabited houses, the increase of population being from 414 in 1831 to 476 in 1841. In 1831 there were nine occupiers of land who employed labourers, and two who did not hire labour.

The consolidation of small farms in the sixteenth century, and the altered social state of the country which took place at that period from a variety of causes, dissevered to a great extent the labouring classes from the soil which they cultivated. They now worked for money wages; and in vain did the legislature attempt to preserve this class from dependence on this source of subsistence, by enacting penalties against building any cottage "without laying four acres of land thereto." (31 Eliz. c. 7.) There were still, however, large tracts of waste and common lands on which the cottager could turn a cow, a pig, a few sheep, or geese, and this right still gave him a portion of subsistence directly from the land. The division and inclosure of these commons and wastes completed the process by which the labourer was thrown for his sole dependence on money wages. From the reign of George I. to the

close of the reign of George III., about four thousand inclosure bills were passed. Under these allotments were made, not to the occupier, but the owner of a cottage, and this compensation for the extinguished common right generally benefited only the large landholder; and when this was not the case, the cottager was tempted by a high price offered by his richer neighbours, or driven by the abuses of the old poor-law, to part with his patch of land.

So long as the labourer can obtain fair wages, he can obtain the chief necessities of life, yet it happens that in most parts of the country he would be unable to procure any other description of vegetables, except potatoes, unless he had a garden attached to his cottage. The cottager's garden should be large enough to enable him to grow sufficient vegetables of all kinds for his own consumption; though if potatoes for winter storing can be purchased from his employer, or grown under the usual conditions on a patch of his employer's land, it will be as profitable as growing them himself, that is, if he is in full employment and obtains piece-work at good wages. The necessity for cultivating the land on his own account, further than for the purpose of raising sufficient vegetables for his own consumption, and of resorting to what is understood by the allotment system, is, in proportion to its urgency, an indication of the low position of the agricultural labourer, and proves either that he has not constant employment or that his wages are very low. If he has sunk to this inferior state, and there are no other means of increasing his resources, the allotment system is then an expedient deserving of attention; but it should be understood that, in an economical sense, it is a more satisfactory state of things when the improvement in the condition of the labourer arises from the prosperity of the farmer and his ability to give higher wages. The profits of the farmer and the wages of the labourer are derived from the same source, and if the latter are reduced to a very low point, wages must be low also. When improvement in the condition of the labourer springs from the allotment system, and not from

the wages which he receives, it may generally be assumed either that the resources of the farmer are impaired, or that the labourers are so numerous that they cannot all obtain as much work as they are capable of performing.

The question of the advantages of the allotment system may be reduced within narrow limits. If it be understood in the sense of the definition given of it at the head of this article, the object is rather moral than economical. But the allotment system may also be intended, not to change the labourer into an independent cultivator, but to supply him with a means of making a living in those places where his ordinary wages are not sufficient. But, as already observed, this implies and admits that his condition is not so good as it ought to be for his own and the general benefit. There is a superabundance of agricultural labour, or a want of sufficient capital invested in agriculture, in the place of the labourers' residence, or both causes combine to depress his condition. Now it is possible that the allotment system, if carried to any great extent, might contribute to increase the superabundance of labour, by inviting to a district more labourers than are wanted, or by giving them an inducement to marry too soon, and so ultimately to depress the condition of the labourer still further. It is no answer to this, that plots of ground have been and are cultivated by the labourer advantageously to himself and profitably to the owner. It may be admitted that circumstances in any given place may be such, that the distribution of allotments among labourers who are not fully employed, may be a great temporary advantage to themselves and to the neighbourhood. But a continual extension of such allotments in the same neighbourhood, though it might be called for by the wants of the labourers, would be no benefit to that neighbourhood, nor ultimately to the labourers themselves; for the end would be, that many of them would be reduced to get their entire means of subsistence out of a small plot of ground. The allotment system then, if carried to this extent, involves the question of the advantage of very small farms

as compared with large ones; a question that cannot be discussed satisfactorily without a consideration of the general economic condition of each particular country. But it may be laid down as a sure principle that in a country where a large part of the population are employed in other pursuits than those of agriculture, the necessary supply of food and other agricultural produce, for those who are not agriculturists, cannot be raised so profitably in any way as by the well instructed farmer, who has a sufficient capital to cultivate a large farm; and if the whole country were divided into small farms, the necessary supply of produce for the wants of the non-agriculturists would ultimately fail altogether. For if the small-farm system were gradually extended in proportion to the demand, the result would be that each man must, in the course of the distribution, have just as much as would raise produce enough for himself and his family; and ultimately, he must be content with less than is sufficient, and he would be reduced to the condition of the Irishman who lives on his small plot of land.

There is a difference between small farms of a few acres which are let on lease, and small farms which are a man's property. If all farms were divided into small holdings, there could be little accumulation and little improvement. There is the same disadvantage in small farms compared with great, that there is in small manufacturing establishments compared with large ones. Profitable production is carried on better on a large farm when proper capital is employed (and indeed a large farm without proper capital would ruin any man), than if it were divided into a number of small farms and the same amount of capital were employed; for it is obvious that the amount of fixed capital in buildings, agricultural instruments, and animals must be greater on the small farms than on the large one. There are many other considerations also which show that, as a matter of public economy, the large farms are best for the public, and consequently for the holders of such farms. The small farms, if stocked sufficiently, would

pay the farmer, not equally well with large farms, but still they might pay him sufficiently well to make his investment profitable. But such farms are generally understocked. In fact it is only in those cases where the cultivation is with the spade, and the land is managed like a garden, that such small holdings can be made profitable: the holder cannot, as a general rule, enter into competition with the large producer as a supplier of the market.

In some countries, where there are numerous small landholders, and it is usual for the estate to be divided on the death of the head of the family, the tendency must be, and is, to carry this division further than is profitable either to the community or to individuals. But in such case the evil may correct itself: a man can sell what it is not profitable to keep, and turn his hand to something else. The man who has been long attached to a small plot as a tenant, and mainly or entirely depends on it for his subsistence, will not leave it till he is turned out.

The allotment system, when limited to the giving a labourer a small plot of garden ground, presents many advantages. But the object of making such allotments is moral rather than economic: the cultivation of a few vegetables and flowers is a pleasing occupation, and has a tendency to keep a man at home and from the alehouse. In many cases also, a small plot of ground can be cultivated by the labour of the wife and the young children, and a pig may be kept on the produce of the garden. The agricultural labour of young children is of very little value, but children may often be employed on a small plot of ground. Such employment is better than allowing the children to do nothing at all and to run about the lanes; and if their labour is well directed to a small garden, it cannot fail to be productive, and to add greatly to the supply of vegetables for the family.

Any extension of the allotment system beyond what a labourer can cultivate easily at his leisure hours, or with the assistance of his family, may be for a time a specious benefit, but in the end will be an injury to himself and to others. If a man is a labourer for hire, that is

his vocation, and he cannot be anything else. If he becomes half labourer and half cultivator, he runs a risk of failing in both capacities; and if he becomes a cultivator on a small scale, and with insufficient capital, he must enter into competition in the market with those who can produce cheaper than himself; or he must confine himself to a bare subsistence from his ground, with little or nothing to give in exchange for those things which he wants and cannot produce himself.

#### ALLOY. [COINAGE.]

**ALMANAC.** The derivation of this word has given some trouble to grammarians. The most rational derivation appears to be from the two Arabic words *al*, the article, and *mana* or *manah*, to count.

An almanac, in the modern sense of the word, is an annual publication, giving the civil divisions of the year, the movable and other feasts, and the times of the various astronomical phenomena, including not only those which are remarkable, such as the eclipses of the moon or sun, but also those of a more ordinary and useful character, such as the places of the sun, moon, and planets, the position of the principal fixed stars, the times of high and low water, and such information relative to the weather as observation has hitherto furnished. The agricultural, political, and statistical information which is usually contained in popular almanacs, though as valuable a part of the work as any, is comparatively of modern date.

It is impossible that any country in which astronomy was at all cultivated could be long without an almanac of some species. Accordingly we find the first astronomers of every age and country employed, either in their construction or improvement. The belief in astrology, which has prevailed throughout the East from time immemorial, rendered almanacs absolutely necessary, as the very foundation of the pretended science consisted in an accurate knowledge of the state of the heavens. With the almanacs, if indeed they had them not before, the above-mentioned absurdities were introduced into the West, and it is only within

these few years that astrological predictions have not been contained in nine almanacs out of ten. It is not known what were the first almanacs published in Europe. That the Alexandrine Greeks constructed them in or after the time of Ptolemy, appears from an account of Theon, the celebrated commentator upon the *Almagest*, in a manuscript found by M. Delambre at Paris, in which the method of arranging them is explained, and the proper materials pointed out. It is impossible to suppose that at any period almanacs were uncommon: but in the dearth of books whose names have come down to us, the earliest of which Lalande, an indefatigable bibliographer, could obtain any notice, are those of Solomon Jarchus, published in and about 1150, and of the celebrated Purbach, published 1450—1461. The almanacs of Regiomontanus, said by Bailly, in his '*History of Astronomy*,' to have been the first ever published, but which it might be more correct to say ever printed, appeared between 1475 and 1506, since which time we can trace a continued chain of such productions. (*Bibliographie Astronomique* of Lalande, and Hutton's *Mathematical Dictionary*, article 'Ephemeris.') The almanacs of Regiomontanus, which simply contained the eclipses and the places of the planets, were sold, it is said, for ten crowns of gold. An almanac for 1442, in manuscript, we presume, is preserved in the Bibliothèque du Roi at Paris. The almanacs of Engel of Vienna were published from 1494 to 1500, and those of Bernard de Granolachs of Barcelona, from about 1487. There are various manuscript almanacs of the fourteenth century in the libraries of the British Museum, and of Corpus Christi College, Cambridge.

The first astronomical almanacs published in France were those of Duret de Montbrison, in 1637, which series continued till 1700. But there must have been previous publications of some similar description; for, in 1579, an ordinance of Henry III. forbade all makers of almanacs to prophesy, directly or indirectly, concerning the affairs either of the state or of individuals. In England James I. granted a monopoly of the trade

in almanacs to the Universities and to the Stationers' Company, and under their patronage astrology flourished till beyond the middle of the last century, but not altogether unopposed; the humorous attack of Swift, under the name of Bickerstaff, upon Partridge's almanac, is well known, both from the amusement which the public derived from the controversy and the perpetuation of the assumed surname in the 'Tatler.' But though Swift stopped the mouth of Partridge, he could not destroy the corporation under whose direction the almanac was published. The Stationers' Company (for the Universities were only passive, having accepted an annuity from their colleagues, and resigned any active exercise of their privilege) found another Partridge, as good a prophet as his predecessor; nor have we been without one to this day.

The Stationers' Company appears to have acted from a simple desire to give people that which would sell, whether astrological or not; and not from any peculiar turn for prophecy inherent in the corporation. Thus even in 1624 they issued at the same time the usual predictions in one almanac, and undisguised contempt of them in another, apparently to suit all tastes. The almanac of Alls-tree, published in the above-mentioned year, calls the supposed influence of the moon upon different members of the body "heathenish," and dissuades from astrology in the following lines, which make up in sense for their want of elegance and rhythm:—

"Let every philomathy (i. e. mathematician)  
Leave lying Astrology,  
And write true Astronomy,  
And l'le beare you company."

In 1775 a blow was struck which demolished the legal monopoly. One Thomas Carnan, a bookseller, whose name deserves honourable remembrance, had some years before detected or presumed the illegality of the exclusive right, and invaded it accordingly. The cause came before the Court of Common Pleas in the year above mentioned, and was there decided against the Company. Lord North, in 1779, brought a bill into the House of Commons to renew and legalize the privilege, but, after an able

argument by Erskine in favour of the public, the House rejected the ministerial project by a majority of 45. The absurdity and even indecency of some of these productions were fully exposed by Erskine; but the defeated monopolists managed to regain the exclusive market by purchasing the works of their competitors. The astrological and other predictions still continued; but it is some extenuation that the public, long used to predictions of the deaths of princes and falls of rain, refused to receive any almanacs which did not contain their favourite absurdities. It is said (Baily, *Further remarks on the defective state of the Nautical Almanac*, &c., p. 9) that the Stationers' Company once tried the experiment of partially reconciling Francis Moore and common sense, by no greater step than omitting the column of the moon's influence on the parts of the human body, and that most of the copies were returned upon their hands. For more detail upon the contents of former almanacs, see the *Companion to the Almanac* for 1829, and also the *London Magazine* of December, 1828, and *Journal of Education*, No. V.

The 'British Almanac' was published by the Society for the Diffusion of Useful Knowledge in 1828. Its success induced the Stationers' Company to believe that the public would no longer refuse a good almanac because it only predicted purely astronomical phenomena; and they accordingly published the 'Englishman's Almanac,' which is unexceptionable. Other almanacs have diminished the quantity and tone of their objectionable parts.

Of the professedly astronomical almanacs the most important in England is the 'Nautical Almanac,' published by the Admiralty for the use both of astronomers and seamen. This work was projected by Dr. Maskelyne, then Astronomer Royal, and first appeared in 1767. The employment of lunar distances in finding the longitude, of the efficacy of which method Maskelyne had satisfied himself in a voyage to St. Helena, required new tables, which should give the distances of the moon from the sun and principal fixed stars, for intervals of a

few hours at most. By the zeal of Dr. Maskelyne, aided by the government, the project was carried into effect, and it continued under his superintendence for forty-eight years. During this time it received the highest encomiums from all foreign authorities, for which see the French *Encyclopædie*, art. 'Almanach,' and the Histories of Montucla and Delambre. From 1774 to 1789 the French 'Connaissance des Temps' borrowed its lunar distances from the English almanac. On the death of Maskelyne it did not continue to improve, and, without absolutely falling off, was inadequate to the wants either of seamen or astronomers. From the year 1820, various complaints were made of it in print. It was latterly stated that officers employed in surveys were obliged to have recourse to foreign almanacs for what could not be obtained in their own; that Berlin, Coimbra, and even Milan were better provided with the helps of navigation; and, finally, that the calculations were not made from the best and most improved tables. In consequence of these complaints, which were almost universally allowed by astronomers to contain a great deal of truth, the government, in 1830, requested the opinion of the Astronomical Society upon the subject, and the Report of the Committee appointed by that body, which may be found in the fourth volume of their *Transactions*, is a sufficient proof of the opinion of practical astronomers on the previous state of the work. The alterations proposed by the Society were entirely adopted by the government, and the first almanac containing them was that for 1834. The contents of the old 'Nautical Almanac' may be found in the *Companion to the Almanac* for 1829. We subjoin a list of the principal alterations and additions which appear in the new work:—

1. The substitution of *mean* for *apparent* time throughout, the sun's right ascension and declination being given for both mean and apparent noon.

2. The addition of the mean time of transit of the first point of Aries, or the beginning of the sidereal day.

3. The moon's right ascension and declination given for every hour, instead of

every twelve hours. We must mention however that the intervals of twelve hours were diminished to three hours in the 'Nautical Almanac' for 1833, by Mr. Pond, the Astronomer Royal.

4. The distances of the moon from the planets for every three hours.

5. The time of contact of Jupiter's satellites and their shadows with the planet.

6. Logarithms of the quantities which vary from day to day, used in the reduction of the fixed stars.

7. Lists of stars which come on the meridian nearly with the moon; of occultations of the planets and stars by the moon, visible at Greenwich.

8. The places of the old planets for every day at noon, instead of every tenth day; and those of the four small planets for every fourth day, which were previously not mentioned at all.

9. The 60 stars, whose places were given for every ten days, are increased to 100.

10. The number of lunar distances given is very much increased.

Besides these principal alterations, there is a large number of minor additions, tending for the most part to save labour in calculation; and the extent to which the results have been carried is materially enlarged. Any *errata* discovered in any mathematical tables which are generally or even occasionally of use, will be published in the 'Nautical Almanac,' if communicated by the finder.

This country was forestalled in most of the important changes just mentioned, by the Berlin 'Ephemeris,' published under the superintendence of Professor Encke. Its predecessor, the 'Astronomisches Jahrbuch,' was conducted for fifty years by the celebrated Bode; and was entirely remodelled by Encke in 1830. Of other works of the same kind, published on the Continent, those of Coimbra and Milan are among the most valuable; the latter was commenced in 1755, by M. de Casaris; we have not been able to learn the date of the first establishment of the former.

The oldest national astronomical almanac is the French 'Connaissance des Temps,' published at present under the superintendence of the Bureau des Longitudes at Paris. It was commenced in



1679 by Picard, and continued by him till 1684. It then passed through the hands of various astronomers, till 1760, when the conduct of it was given to Lande, who, besides other alterations, first introduced the lunar distances, which have been already alluded to. At present the plan is very similar to that of the new 'Nautical Almanac,' with the addition of very valuable original memoirs which appear yearly. In fact we may say generally, that the original contributions to the various continental almanacs are among their most valuable parts; and, as Professor Airy remarks, 'Reports of the British Association,' &c., p. 128, "In fact nearly all the astronomy of the present century is to be found in these works," that is, in certain periodicals which are mentioned, "or in the 'Ephemerides' of Berlin, Paris, or Milan."

Next to the 'Nautical Almanac,' the private publication which is most entitled to notice as an astronomical almanac is White's 'Ephemeris,' a work which is nearly as old as the monopoly previously described. For many years past, this publication has given astronomical data sufficient to enable the seaman to find his latitude and time. The 'Gentleman's Diary,' commenced in 1741, and the 'Ladies' Diary,' in 1705, have powerfully aided in keeping up a mathematical taste, to a certain extent, throughout the country, by annually proposing problems for competition: several, who have afterwards become celebrated in mathematics, have commenced their career by the solution of these problems.

The duty on almanacs was abolished in August, 1834, by 3 & 4 William IV. c. 57. The stamp was fifteen pence on each almanac. The average number of stamps issued between 1821 and 1830 inclusive, was about 499,000 yearly, producing an average revenue of about 31,000*l*. The largest number of almanacs stamped in any one year during the above period was 528,254 in 1821, and the smallest number was 444,474 in 1830; and in 1833, the year before the duty was abolished, the amount of duty was only 26,164*l*. The tax prevented the free competition of respectable publishers in almanacs, and tempted so many persons

to evade the law, that unstamped almanacs were circulated in as large numbers as those which paid the tax. It is stated in the Report of the Commissioners of Excise Inquiry that 200 new almanacs were published as soon as the duty was repealed, of some of which upwards of 250,000 copies were sold, although the old ones not only maintained, but, in some cases, doubled their circulation. The most marked effect of the repeal of the duty is perhaps the improvement in the character of almanacs.

ALMONER, once written Aumner and Amner, was an officer in a king's, prince's, prelate's, or other great man's household, whose business it was to distribute alms to the poor. Previous to the dissolution every great monastery in England had its almoner. The almoner of the king of France was styled his *grand aumonier*, and we find a similar officer at a very early period attached to the household of the popes. The word almoner is a corruption of eleemosynarius, a word which is formed from the Greek *eleēmōsyne* (ἐλεημοσύνη). The word almonarius is a corruption of eleemosynarius.

'Fleta,' a law treatise of the time of Edward I., describes the duties of the high almoner as they then stood in England (ii. c. 23). He had to collect the fragments of the royal table, and distribute them daily to the poor; to visit the sick, poor widows, prisoners, and other persons in distress; he reminded the king about the bestowal of his alms, especially on saints'-days, and was careful that the cast-off robes, which were often of high price, should not be bestowed on players, minstrels, or flatterers, but their value given to increase the king's charity.

In modern times the office of lord high almoner has been long held by the archbishops of York. There is also a sub-almoner, an office which is at present filled by the dean of Chester. The hereditary grand almoner is the Marquis of Exeter. There is an office appropriated to the business of the almonry in Middle Scotland Yard, Whitehall. Chamberlayne, in the 'Present State of Great Britain,' octavo, London, 1755, gives an account of the lord almoner's office as it

hen stood. "The lord almoner disposes of the king's alms, and for that use receives (besides other monies allowed by the king) all deadands and *bona felonum de se* to be that way disposed. Moreover, the lord almoner hath the privilege to give the king's dish to whatsoever poor men he pleases; that is, the first dish at dinner which is set upon the king's table, or instead thereof *4d. per diem*. Next he distributes to twenty-four poor men, nominated by the parishioners of the parish adjacent to the king's palace of residence, to each of them *4d.* in money, a twopenny loaf, and a gallon of beer, or, instead thereof, *3d.* in money, to be equally divided among them every morning at seven of the clock at the court-gate; and every poor man, before he receives the alms, to repeat the Creed and the Lord's Prayer in the presence of one of the king's chaplains, deputed by the lord almoner to be his sub-almoner; who is also to scatter new-coined twopences in the towns and places where the king passeth through in his progress, to a certain sum by the year. Besides there are many poor pensioners to the king and queen below stairs, that is, such as are put to pension, either because they are so old that they are unfit for service, or else the widows of such of his majesty's household servants that died poor, and were not able to provide for their wives and children in their lifetimes: every one of these hath a competency duly paid them. Under the lord high almoner there are a sub-almoner, a yeoman, and two grooms of the almonry."

The lord almoner's annual distribution is now made in the queen's name, on the Thursday before Easter, called Maundy Thursday.

There is at Cambridge the lord almoner's professorship of Arabic, founded in 1770. The professor is appointed by the lord almoner, and is paid out of the almonry funds.

The grand almoner of the king of France was once the highest ecclesiastical dignitary in that kingdom. To him belonged the distribution of the royal bounty to the poor, the superintendence of all houses in the kingdom for the reception of poor foreigners, and houses of

lepers; the king received the sacrament from his hand; and he said mass before the king in all great ceremonies and solemnities. At the establishment of the imperial household in 1804, Napoleon restored the office of grand almoner of France in the person of Cardinal Fesch: and the office was continued till the exile of Charles X.

Ducange, in his *Glossary* ('*Eleemosynarii*'), gives other meanings of the word almoner. It was sometimes used for those who distributed the pious bequests of others; sometimes for a person who by testament left alms to the poor; and sometimes for the poor upon whom the alms were bestowed. The *eleemosynarii regis*, or persons who were supported by the king's bounty, occasionally noticed in the Domesday Survey, were of this last description. Almoner is a name also given in ecclesiastical writers to the deacons of churches.

ALMS-HOUSE, an edifice, or collection of tenements, built by a private person, and endowed with a revenue for the maintenance of a certain number of poor, aged, or disabled people. England is the only country which possesses alms-houses in abundance, though many such exist in Italy. In England, they appear to have succeeded the incorporated hospitals for the relief of poor and impotent people, which were dissolved by King Henry VIII. The rules for the government of alms-houses are those which the founder has made or empowered others to make. Alms-houses belong to that class of endowments which are comprehended under the name of Charities.

AMBASSADOR (directly from the French *Ambassadeur*), is the term commonly used to designate every kind of diplomatic minister or agent. The word ambassador is sometimes written with an E, a form which the English always use in the word Embassy. Spelman derives Ambassador from Ambactus, a word used by Cæsar (*Gallie War*, vi. 15, '*Ambactos clientesque*'). The various forms in which the word Ambassador has been written are collected in Webster's *English Dictionary*, art. 'Embassador.' An ambassador may be defined to be a person sent by one sovereign power to another to

treat upon affairs of state. The necessity of employing such means of communication between independent communities is obvious, and there is hardly an instance of a people in so rude a state of society as to be ignorant of the functions of an ambassador, and of the respect which is due to his office. In modern states however, whatever may be the form of government, ambassadors are generally named by the person who has the supreme executive power. In the United States of North America, the President names an ambassador, but the appointment must be confirmed by the Senate. Sometimes the power of appointing and sending ambassadors has been delegated to a subordinate executive officer, as it was to the viceroy of Naples, the Governor of Milan, and the Spanish Governor-General of the Netherlands. It is exercised by every power which can make war and peace, and accordingly is possessed by the East India Company. Embassies were anciently sent only on particular occasions, with authority to transact some specific business; as, for instance, to negotiate a treaty of peace or alliance, or to complain of wrongs and demand redress. But great changes were gradually introduced in the political condition of Europe. The several states which had risen to importance, although independent of one another, were bound together by numerous ties, and with the extension of commerce, the intercourse between them became so great, and their interests so complicated, that it was found expedient for them to keep up a more regular communication; and with this view it became customary for one power to have its ambassador residing constantly at the court or capital city of another.

Among the ordinary functions of an ambassador, the following are the most important:—1st, to conduct negotiations on behalf of his country; the extent of his authority in this respect is marked and limited by the power which he has received from home; he has, however, according to modern usage, no authority to conclude any engagement definitively, the treaty which he has negotiated having no binding power, till it has been formally ratified by his government; 2ndly,

to watch over the accomplishment of all existing engagements; and 3rdly, to take care generally that nothing is done within the territories of the state, nor any treaty entered into with other powers, by which the honour or interests of his country can be affected, without informing his government of such measures.

An ambassador has also certain duties to perform towards private individuals of his own nation: such as to provide them with passports, where they are required; to present them at court, if they produce the requisite testimonials; to protect them from violence and injustice; and if any manifest wrong has been done, or if justice has been refused them, to exert himself to obtain redress, and to secure for them the full benefit of the laws; and, lastly, to assist them in maintaining their rights in courts of justice, as well by certifying what is the law of his country upon the point in dispute, as by the authentication of private documents, which is usually confined in practice to such as have been previously authenticated at the foreign office of his own government, and thence transmitted to him.

It is now the established usage of European countries and of those parts of North America which were colonized by Europeans and have become independent states, to send ambassadors to one another. The sending of an ambassador by any state implies that such state is also willing to receive an ambassador. It is only, however, in time of peace that this interchange of ambassadors regularly takes place. In time of war, a hostile power cannot claim to have its ambassadors received, unless they are provided with a safe-conduct or passport; and the granting of these is merely a matter of discretion. It is, in all cases, requisite that the ambassador should be provided with the proofs of his authority; these are contained in an instrument, called his Letters of Credence, or Credentials, delivered to him by his own government, and addressed to that of the state to which he is sent. A refusal to receive an ambassador properly accredited, if made without sufficient cause, is considered a gross insult to the power that he represents. But

if one of several competitors for the sovereign power in any country, or if a province which has revolted and asserts its independence, sends an ambassador to a sovereign state, such state, if it receives the ambassador, thereby recognises the competitor in the one case to be actually the sovereign, and the revolted province, in the other, to be actually independent. Though this may be the general principle, the practice is somewhat different. In such cases, consuls are generally first sent; and when a government has been established for some time *de facto*, as it is termed, that is, in fact, it is usual with states who have sent consuls to send ministers also in due time, even though the mother country, to which the revolted states belong, may not have recognised their independence. This was done by the British government and others in the case of the South American states, whose independence Spain has not yet recognised.

It is said that a government may refuse to receive an ambassador, if he is personally disagreeable to the state, or of a notoriously bad character. But it is now generally the practice, in order to avoid such a refusal, to inform the court beforehand of the person intended to be sent. Every government, it is also said, may make general rules respecting the class of persons whom it chooses to admit as ambassadors; but every state would think itself aggrieved and insulted by the refusal of the ambassador whom it has appointed, except on satisfactory grounds. There is nothing, for instance, in the general law of nations to prevent a man's being accredited by a foreign power to the government of his own country; and in this case he is clothed, as far as his character as an ambassador is concerned, with precisely the same rights as if he was a member of the state by which he is employed. Prince Pozzo di Borgo, a Corsican, was many years Russian ambassador at Paris. But any government may, by a general regulation, refuse to admit, as France and Sweden have in fact done, any of its own subjects as the representative of an independent state.

It is the duty of a state, with respect to ambassadors sent to it, to protect them

from everything which may in any degree interfere with the due performance of their functions. This duty commences before the ambassador has delivered his credentials, and as soon as his appointment has been notified to the court.

The first privilege of an ambassador in the country to which he is sent, is perfect security. This is necessary in order that he may discharge his functions; and the violation of this privilege has always been considered an offence against the law of nations, whether the violation proceeds from the sovereign power itself, or from the unauthorized acts of individuals.

The Porte used to violate this privilege, by confining the ministers of any power it went to war with, in the Seven Towers, under the pretence of protecting them from popular outrage. The last minister shut up in the 'Seven Towers' was M. Ruffin, the envoy of the French republic. Since that time the practice has dropped.

The second important privilege of an ambassador is, that no legal process can affect him, in his person or his property; so much of his property, at least, as is connected with his official character, such as his furniture, equipages, &c. (Bynkerschoek, *De foro Legatorum*.) This privilege is in some degree subsidiary to the former; for it would be of little avail to protect an ambassador from open outrage, if he were liable to be harassed by legal proceedings, which, whether instituted (as it is always possible they might be) without foundation, or well founded, would interfere with the discharge of his public functions. Ambassadors are, therefore, deemed not to be amenable for their conduct before any criminal tribunal of the country they reside in.

But ambassadors cannot misconduct themselves with impunity. They are bound to respect the law and customs of the country they are in; and if they commit any offence, the sovereign may complain of it to the government which they represent; or, if the case is of a more serious nature, he may demand that they be recalled, or may even dismiss them peremptorily, and in either case require that they be brought to trial in their own country. And if an ambassador is guilty of an offence which threatens the

immediate safety of the state, not even the privilege of personal security will protect him from any degree of force which may be necessary to defeat his intentions: thus, if he engages in a conspiracy against the government, he may, if the circumstances require it, be put under arrest, in order to be sent home, and if he is found in arms joining in a rebellion, he may be treated as an enemy.

The same principle also extends to civil suits, and no claim can be enforced against an ambassador by any compulsory process.

These privileges are not confined to the ambassador alone, but are extended to all his suite—his companions, as they are sometimes called,—including not only the persons employed by him in diplomatic services, but his wife, chaplain, and household. The law of nations in this respect is fully recognised by the law of England. By the statute of 7 Anne, c. 12, all legal process against the person or goods of an ambassador, or of his domestic, or domestic servants, is declared to be void. The benefit of this Act may be claimed by any one who is actually in the domestic service of the ambassador, whether he is a British subject or a foreigner, provided he is not a merchant or trader within the bankrupt law; and it is not necessary that he should be resident in the ambassador's house. But if he takes a house, and uses it for any other purpose besides that of residence—as if he lets part of it in lodgings, he so far loses his privilege, and his goods are liable to be distrained for parochial rates.

Whoever sues out or executes any process contrary to the provisions of the act, is punishable at the discretion of the lord chancellor and the two chief justices, or any two of them, as a violator of the law of nations, and disturber of the public repose;—with this exception, however, that no one can be punished for arresting an ambassador's servant, unless the name of such servant be registered with the secretary of state, and by him transmitted to the sheriffs of London and Middlesex.

The third important privilege of an ambassador is, that his residence enjoys a security similar to that of his person

and property: it is not only protected from open outrage, but it is likewise exempted from being searched or visited, whether by the police, by revenue officers, or under colour of legal process of any description whatever.

This privilege has sometimes been construed to extend so far, as to make the ambassador's residence an asylum to which any offender might flee and be out of the reach of the law; but the government may, in such a case, demand that the offender be given up, and if he is an offender against the state, in case of a refusal on the part of the ambassador, and if the circumstances require it, he may be taken by force:

This privilege of asylum, as it is called, was formerly granted in some cities to the whole quarter in which the ambassador resided; such was the case at Madrid, till in the year 1684 it was confined to the residence itself. Such also was the case at Rome to a much later date; and even at the present day some vestiges of this immunity still remain, but since 1815 it has been confined to cases of correctional police.

There are some other privileges which, though not essential to the character of ambassadors, are yet very generally admitted. Ambassadors are, for instance, in all civilized countries allowed the free exercise of their religion; they are in general exempted from direct taxation; and they are usually allowed to import their goods without paying any custom-house duties: this last privilege, however, being extremely liable to abuse, has sometimes been limited. At Madrid since the year 1814, and at St. Petersburg since 1817, ambassadors are allowed six months to import their goods free of customs, and after that time their exemption ceases. At Berlin they are only allowed to import goods until the duties payable amount to a certain sum.

If any violence has been offered to an ambassador, or any of his privileges have been infringed, although he may himself, if he chooses, prosecute the offender, it is more usual for him to demand satisfaction of the government, and it is their duty to bring the offender to punishment.

The title of ambassador, in the more limited sense of the word, as it is used at present, is confined to diplomatic ministers of the highest order. Ambassadors, in this sense of the word, hold an office of very exalted rank; their credentials are addressed immediately from their own sovereign to the sovereign to whom they are sent; with whom they thereby are entitled to treat personally, without the intervention of his ministers, in the same manner as their master would if he were present. This is a power, however, which, at least in free states, where the ministers alone are responsible for the acts of the government, exists rather in name than in reality. The ambassadors, properly so called, are deemed to represent not only the interests, but likewise the person and dignity of their master or of their state; but this representative character, as it is called, amounts in reality to little more than the enjoyment of certain marks of distinction; the principal of which are, that an ambassador is always styled 'Your Excellence,' which was formerly the mode of addressing a sovereign prince; 2. That he takes precedence next after princes of the blood royal, &c.

Ambassadors are of two kinds:—1. Those who reside regularly at the court at which they are accredited, to perform the usual duties of their office; 2. Those who are sent on special occasions, either on missions of important business, as the negotiation of a treaty, or more frequently on some errand of state ceremony, such as to be present at a coronation or a marriage. The designation of Ambassador Extraordinary was originally appropriated to those of the second kind (such as belonged to the first being styled Ordinary Ambassadors); but the title of Extraordinary, being considered more exalted, is now usually bestowed even on those who are regularly resident. To the highest order of minister belong also the Legates and Nuncios of the Pope. [LEGATE; NUNCIO.]

The rank and pomp annexed to the office of ambassador being attended with considerable expense, and having frequently occasioned embarrassments and disputes, it was found expedient to employ

ministers under other denominations, who, though inferior in point of dignity, should be invested with equal powers. The chief difference by which all the lower orders of diplomatic agents are distinguished from ambassadors, properly so called, is, that they are the representatives not of the personal dignity of their prince, but only of his affairs and interests, in the same manner as an ordinary agent is the representative of his principal. Diplomatic ministers of the second order receive their credentials (like ambassadors) immediately from their own sovereign. To this order belong envoys, ordinary and extraordinary, ministers plenipotentiary, the internuncios of the pope, and the Austrian minister at Constantinople, who is styled internuncio and minister plenipotentiary. The distinction of ministers into those of the first and those of the second order began to prevail towards the end of the fifteenth century, and is said to have been originally introduced by Louis XI. of France. [ENVOY.]

There is likewise a third order of diplomatic agents, which does not appear to have been recognised till towards the beginning of the eighteenth century. Those who belong to it are known by the title of *Chargés d'Affaires* (which is said to have been given by a prince, for the first time, to the Swedish minister at Constantinople, in 1748), Resident, or Minister. Their credentials are given them by the ministers of state in their own country, and are addressed to the ministers of the country they are sent to; except in the case of the diplomatic agents of the Hanseatic towns, whose credentials are addressed to the sovereign. In this order may also be included the ministers whom an ambassador or envoy, by virtue of an authority from his prince or state, appoints (usually under the title of *Chargé d'Affaires*) to conduct in his absence the affairs of his mission. [CHARGE' D'AFFAIRES.]

The great Powers at the Congress of Vienna, in 1815, divided diplomatic agents into four classes: 1. Ambassadors, legates, or nuncios. 2. Envoys, ministers, and other agents accredited to sovereigns. 3. *Chargés d'Affaires*, accredited to the department of foreign affairs.

Consuls are not in general reckoned among diplomatic ministers; in some particular cases, however, where they have diplomatic duties to perform, they are accredited and treated as ministers. [CONSUL.]

It was long a disputed question, whether the smaller powers should communicate by means of ministers of the highest order. According to the practice of the present day, it is only in the intercourse between the great powers that ambassadors or ministers are employed. The United States of North America are usually represented at the courts of the great powers of the first class by ministers plenipotentiary, and at those of inferior rank by *chargés d'affaires*; and they have never sent a person of the rank of ambassador in the diplomatic sense. (Note, *Kent's Commentaries*, p. 40, vol. i.) The courts to which the British government sends an ambassador are those of Paris, Vienna, St. Petersburg and the Porte: to the courts of Prussia, Spain, the Two Sicilies, Holland, Portugal, Sweden, Hanover, Brazil, and to the United States, we send an 'Envoy Extraordinary and Minister Plenipotentiary;' to Sardinia, Denmark, Bavaria, Würtemberg, and Frankfort, an 'Envoy Extraordinary;' to Saxony, Tuscany, the Swiss Cantons, Greece, Mexico, and Buenos Ayres, a Minister Plenipotentiary; to the states of New Grenada, Venezuela, Peru, Chili, and Texas, a 'Chargé d'Affaires.' The principal secretary of an ambassador is termed 'Secretary of Embassy,' and of envoys and ministers, 'Secretary of Legation.' Attached to each embassy there are two paid 'Attachés,' but in the embassy to the Ottoman Porte, when an 'envoy and minister' only is employed, there is only one paid attaché. The salary of the ambassador to the court of St. Petersburg is 11,000*l.* a-year; that of the secretary is 1000*l.*; and the two attachés receive 400*l.* and 300*l.* a-year respectively. The expenses of the other embassies are not quite so high. The salaries and pensions for diplomatic services are paid out of the consolidated fund, and are regulated by 2 & 3 Wm. IV. c. 116. When this act was passed, in 1832, the annual sum was fixed at 203,510*l.*; and it was provided that

until the amount was reduced to 180,000*l.*, his majesty should not grant a larger annual amount in diplomatic pensions than 2000*l.*; and that when reduced, the whole annual expense of this branch of the public service should not exceed 180,000*l.* In 1843 the charge for services and allowances was 140,000*l.*, and for pensions 39,982*l.* 12*s.* 6*d.*; making a total of 179,982*l.* 12*s.* 6*d.*

The rules relating to the ceremonial due to diplomatic ministers are laid down at great length by writers on the subject. The first thing to be done by a minister is to announce his arrival to the minister for foreign affairs. He is then entitled to an audience of the prince, either public or private. The right of demanding at all times, during his stay, a private audience, is the distinction and important privilege of an ambassador. Should his only chance of carrying a measure depend on his having a private audience of the prince to whom he is sent, it is evident that this might be thwarted by the prince's ministers, who would of right be present at the audience of any minister below the rank of ambassador. A minister plenipotentiary, as well as an ambassador, can claim a public audience. He there presents his credentials to the prince, and hands them over to the minister for foreign affairs. Ministers and envoys also present their credentials to the prince in person. After he has been presented to the prince, a minister visits all the diplomatic body. But a minister of the highest order pays his respects in person only to those of the same rank—with ministers of a lower order he merely leaves his card. When an ambassador arrives at a court, all the diplomatists there, who are not of his own rank, call on him first.

Disputes have frequently arisen among ministers of the same rank about precedence. The rules by which it has at various times been endeavoured to settle the respective rank of the representative of each state, being founded on no solid principle, and not sanctioned by general acquiescence, it is unnecessary to mention. A rule which has long been partially adopted, may now be considered fully established: for at the Congress o.

Vienna, in 1815, it was agreed by the eight powers which signed the treaty of Paris, that ministers in each class shall take precedence among themselves, according to the date of their official announcement at court, and that the order of signature of ministers to acts or treaties between several powers, that allow of the alternate, should be determined by lot. If the reader is curious to know wherein this precedence chiefly consists,—in what manner ministers are required to arrange themselves when they are standing up; in what, when they sit round a table: what order it behoves them to observe when they are placed in a row; what, when they walk in a line: how their rank is marked when their numbers are even; how, when their numbers are odd—we must refer him to the *Manuel Diplomatique* of the Baron Charles De Martens, chap. vi.

For further information on the subject of Ambassador, he may consult Wicquefort, *De l'Ambassadeur*; *Les Causes célèbres du droit des Gens*, by C. De Martens; and the writers on the law of nations, particularly Vattel and G. F. Martens; and likewise the *Cours de droit public*, par Pinheiro-Ferreira.

The functions of permanent Ambassadors, as above explained, appear to have originated in modern times. The ambassadors (πρέσβεις) sent by the Greek states, and those sent by the Romans (legati) or received by them, were limited to extraordinary occasions. Among the Romans, ambassadors were so often sent by foreign nations to them, and sent by the Romans to foreign states, that the law with respect to them (Jus Legationis; Livy, vi. 17) became in course of time well settled. Ambassadors to Rome were under the protection of the state, whether they came from a hostile or a friendly nation. Their reception and the length of their stay at Rome would of course depend on the nature of the relations between their state and Rome, and the objects of their mission. They were received by the Roman senate and transacted their business with that body. The senate appointed the ambassadors who were sent from Rome to foreign states. The expenses of such ambassadors were paid by the Roman state, but the ambassadors were also entitled to make

certain demands from the provincials in their progress through a Roman province. This privilege gave rise in the later part of the republic to the practice of the Roman 'libera legatio,' which was the term applied to the permission obtained from the senate by a senator to leave Rome for distant parts on his own business. It was called 'libera,' free, apparently because the Senator had merely the title of Legatus without the duty; and it was called 'legatio' in respect of putting him on a like or similar footing with real legati as to the protection to his person and allowances to be claimed in the provinces. This privilege was often abused, both as to the length of time for which it was obtained and otherwise. A Lex Julia (of the Dictator Cæsar) limited the time to which these 'liberæ legationes' could be extended; but it is an incorrect inference from a passage of Cicero (*Ad Attic.* xv. 11) to conclude that the law fixed five years: the period which was fixed by the law is not stated. The 'libera legatio' is mentioned in the Pandect (50, tit. 7, s. 14), whence we may conclude that the practice continued to the time of Justinian, though probably in some modified form.

The word 'legatus' is a participle from the verb 'lego,' and signifies a person who is commissioned or empowered to do certain things.

AMENDMENT. [BILL IN PARLIAMENT.]

AMNESTY is a word derived from the Greek ἀμνηστία, *amnēstia*, which, literally, signifies nothing more than non-remembrance. The word *amnēstia* is not used by the earlier Greek writers; but the thing intended by it was expressed by the verbal form (μὴ μνησικακεῖν). The word ἀμνηστία occurs in Plutarch and Herodian. Some critics suppose that Cicero (*Philipp.* i. 1) alludes to his having used the word; but he may have expressed the thing without using the word *amnēstia*. It occurs in the life of Aurelian by Vopiscus (c. 39), according to some editions in the Latin form, but it is possible that Vopiscus wrote the word in Greek characters, and it is doubtful whether the word was ever incorporated into the Latin lan-



guage. Nepos, in his life of Thrasybulus (c. 3), expresses the notion of an act of Amnesty by the words "lex oblivionis," and it is clear from a passage in Valerius Maximus (iv. 1), that the word was not adopted into the Latin language when Valerius wrote, whatever that time may be.

The notion of an amnesty among the Greeks was a declaration of the person or persons who had newly acquired or recovered the sovereign power in a state, by which they pardoned all persons who composed, supported, or obeyed the government which had been just overthrown. A declaration of this kind may be either absolute and universal, or it may except certain persons specifically named, or certain classes of persons generally described. Thus, in Athens, when Thrasybulus had destroyed the oligarchy of the Thirty Tyrants, and had restored the democratical form of government, an exceptive amnesty of past political offences was declared, from the operation of which the Thirty themselves, and some few persons who had acted in the most invidious offices under them, were excluded. (Xenophon, *Hellen*. ii. 4, 38; Isocrates, *Against Callimachus*, c. 1.) So when Bonaparte returned from Elba in 1815, he published an amnesty, from which he excluded thirteen persons, whom he named in a decree published at Lyon. The act of indemnity, passed upon the restoration of Charles II., by which the persons actually concerned in the execution of his father were excluded from the benefit of the royal and parliamentary pardon, is an instance of an amnesty from which a class of persons were excepted by a general description and not by name. Of a like nature was the law passed by the French Chambers in January, 1816, upon the return of Louis XVIII. to the throne of France after the victory at Waterloo, which offered a complete amnesty to "all persons who had directly or indirectly taken part in the rebellion and usurpation of Napoleon Bonaparte," with the exception of certain persons, whose names had been previously mentioned in a royal ordinance as the most active partisans of the usurper. It was objected to this French law of

amnesty, that it did not point out with sufficient perspicuity the individuals who were to be excepted from its operation. Instead of confining itself to naming the offenders, it excepted whole classes of offences, by which means a degree of uncertainty and confusion was occasioned, which much retarded the peaceable settlement of the nation. "In consequence of this course," says M. de Châteaubriand in a pamphlet published soon after the event, "punishment and fear have been permitted to hover over France; wounds have been kept open, passions exasperated, and recollections of enmity awakened." The act of indemnity, passed at the accession of Charles II., was not liable to this objection, by the distinctness of which, as Dr. Johnson said, "the flutter of innumerable bosoms was stilled," and a state of public feeling promoted, extremely favourable to the authority and quiet government of the restored prince.

AMPHICTYONS (Ἀμφικτύονες), members of a celebrated council in ancient Greece, called the Amphictyonic Council.

According to the popular story, this council was founded by Amphictyon, son of Deucalion, who lived, if he lived at all, many centuries before the Trojan war. It is supposed, by a writer quoted by Pausanias (x. 8), to derive its name, with a slight alteration, from a word signifying "settlers around a place." Strabo, who professes to know nothing of its founder, says that Acrisius, the mythological king of Argos, fixed its constitution and regulated its proceedings. Amidst the darkness which hangs over its origin, we discover with certainty that it was one of the earliest institutions in Greece. No full or clear account has been given of it during any period of its existence by those who had the means of informing us. The fullest information is supplied by Æschines the orator; but before any attempt is made, by the help of some short notices from other writers, and of conjecture, to trace its earlier history, it may not be amiss to state what is certainly known of this council as it existed in his time.

According to Æschines, the Greek nations which had a right to be represented

in the council were the Thessalians, Bœotians, Dorians, Ionians, Perrhæbians, Magnesians, Locrians, Cèteans, Phthiots, Malians, Phocians. Each nation was represented by certain sovereign states, of which it was supposed to be the parent: thus Sparta, conjointly with other Dorian states, represented the Dorian nation. Amongst the states thus united in representing their common nation, there was a perfect equality. Sparta enjoyed no superiority over Dorium and Cytinium, two inconsiderable towns in Doris; and the deputies of Athens, one of the representatives of the Ionian nation, sat in the council on equal terms with those of Eretria and Eubœa, and of Priene, an Ionian colony in Asia Minor. From a rather doubtful passage in *Æschines* (*De Fals. Leg.* 43), compared with a statement in *Diodorus* (xvi. 60), it seems that each nation, whatever might be the number of its constituent states, had two, and only two votes. The council had two regular sessions in each year, meeting in the spring at Delphi, and in the autumn near Pylæ, otherwise called Thermopylæ; but special meetings were sometimes called before the usual time. From its meeting at Pylæ, a session of Amphictyons was called a Pylæa, and the deputies were called Pylagoræ, that is, councillors at Pylæ. There were also deputies distinguished by the name of Hieromnemons, whose office it was, as their name implies, to attend to matters pertaining to religion. Athens sent three Pylagoræ and one Hieromnemon. The former were appointed for each session; the latter probably for a longer period, perhaps for the year, or two sessions. The council entertained charges laid before it in relation to offences committed against the Delphic god, made decrees thereupon, and appointed persons to execute them. These decrees, as we learn from *Diodorus* (xvi. 24), were registered at Delphi. The oath taken by the deputies bound the Amphictyons not to destroy any of the Amphictyonic cities, or to debar them from the use of their fountains in peace or war; to make war on any who should transgress in these particulars, and to destroy their cities; to punish with hand, foot, voice, and with all their might, any who

should plunder the property of the god (the Delphic Apollo), or should be privy to or devise anything against that which was in his temple. This is the oldest form of the Amphictyonic oath which has been recorded, and is expressly called by *Æschines* the ancient oath of the Amphictyons. It has inadvertently been attributed to Solon by Mr. Mitford, who has apparently confounded it with another oath imposed on a particular occasion. An ordinary council consisted only of the deputed Pylagoræ and Hieromnemons; but on some occasions at Delphi, all who were present with the Amphictyonic deputies to sacrifice in the temple and consult the oracle of the god, were summoned to attend, and then it received the name of an *ecclesia*, or assembly. Beside the list of Amphictyonic nations given by *Æschines*, we have one from *Pausanias*, which differs a little from that of *Æschines*, and another from *Harporation*, which differs slightly from both. The orator, whilst he speaks generally of twelve nations, names only eleven. *Strabo* agrees with him in the larger number. It is further remarkable, that whilst *Æschines* places the Thessalians at the head of his list, *Demosthenes* (*De Pace*, p. 62) expressly excludes them from a seat in the council.

*Æschines* has left us much in the dark as to the usual mode of proceeding in the Amphictyonic sessions; and we shall look elsewhere in vain for certain information. It should seem that all the Pylagoræ sat in the council and took part in its deliberations; but if the common opinion mentioned above, respecting the two votes allowed to each nation be correct, it is certain that they did not all vote. The regulations according to which the decisions of the twelve nations were made can only be conjectured. We know that the religious matters which fell under the jurisdiction of the Amphictyonic body were managed principally, at least, by the Hieromnemons, who appear, from a verse in *Aristophanes* (*Nub.* 613), to have been appointed by lot, but we are not as well informed respecting the limits which separated their duties from those of the Pylagoræ, nor respecting the relative rank which they held in

the council. (*Æschines, Contr. Ctes.* p. 68-72; *Fals. Leg.* p. 43.) The little that is told is to be found for the most part in the ancient lexicographers and scholiasts, or commentators, who knew perhaps nothing about the matter, and whose accounts are sufficiently perplexing to give room for great variety of opinions among modern writers. Some have seemed to themselves to discover that the office of the Hieromnemons was of comparatively late creation, that these new deputies were of higher rank than the Pylagoræ, and that one of them always presided in the council; others again have supposed—what, indeed, an ancient lexicographer has expressly asserted—that they acted as secretaries or scribes. Two Amphictyonic decrees are found at length in the oration of Demosthenes on the crown, both of which begin thus: “When Cleinagoras was priest, at the vernal Pylæa, it was resolved by the Pylagoræ and the Synedri (joint councillors) of the Amphictyons, and the common body of the Amphictyons.” Some have assumed that Cleinagoras the priest was the presiding Hieromnemon, and others that the Hieromnemons are comprehended under the general name of Pylagoræ. *Æschines* again has mentioned a decree in which the Hieromnemons were ordered to repair at an appointed time to a session at Pylæ, carrying with them the copy of a certain decree lately made by the council. Of the council, as it existed before the time of *Æschines*, a few notices are to be found in the ancient historians, some of which are not unimportant. According to *Herodotus* (vii. 200) the council held its meetings near Thermopylæ, in a plain which surrounded the village of Anthela, and in which was a temple dedicated to the Amphictyonic Ceres; to whom, as *Strabo* tells us (ix. 429), the Amphictyons sacrificed at every session. This temple, according to *Callimachus* (*Ep.* 41), was founded by *Acrisius*; and hence arose, as *Müller* supposes in his history of the Dorians (vol. i. p. 289, English translation), the tradition mentioned above.

We are told by *Strabo* (ix. 418) that after the destruction of Crissa by an Amphictyonic army, under the command of

Eurylochus, a Thessalian prince, the Amphictyons instituted the celebrated games, which from that time were called the Pythian, in addition to the simple musical contests already established by the Delphians. *Pausanias* also (x. 7) attributes to the Amphictyons both the institution and subsequent regulation of the games; and it is supposed by the most skilful critics, that one occasion of the exercise of this authority, recorded by *Pausanias*, can be identified with the victory of Eurylochus mentioned by *Strabo*. According to this supposition, the Crissean and the celebrated Cirrhean war are the same, and Eurylochus must have lived as late as B.C. 591. But the history of these matters is full of difficulty, partly occasioned by the frequent confusion of the names of Crissa and Cirrha.

From the scanty materials left us by the ancient records, the following sketch of the history of this famous council is offered to the reader, as resting on some degree of probability:—

The council was originally formed by a confederacy of Greek nations or tribes which inhabited a part of the country afterwards called Thessaly. In the lists which have come down to us of the constituent tribes, the names belong for the most part to those hordes of primitive Greeks which are first heard of, and some of which continued to dwell north of the Malian bay. The bond of union was the common worship of Ceres, near whose temple at Anthela its meetings were held. With the worship of the goddess was afterwards joined that of the Delphic Apollo; and thenceforth the council met alternately at Delphi and Pylæ. Its original seat and old connections were kept in remembrance by the continued use of the term Pylæa, to designate its sessions wherever held: though eventually the Delphic god enjoyed more than an equal share of consideration in the confederacy. It may be remarked that the Pythian Apollo, whose worship in its progress southwards can be faintly traced from the confines of Macedonia, was the peculiar god of the Dorians, who were of the Hellenic race; whilst the worship of Ceres was probably of Pelasgic origin,

and appears at one time to have been placed in opposition to that of Apollo, and in great measure to have retired before it. There is no direct authority for asserting that the joint worship was not coeval with the establishment of the council; but it seems probable from facts, which it is not necessary to examine here, that an Amphictyonic confederacy existed among the older residents, the worshippers of Ceres, in the neighbourhood of the Malian bay, before the hostile intruders with their rival deity were joined with them in a friendly coalition. The council met for religious purposes, the main object being to protect the temples and maintain the worship of the two deities. With religion were joined, according to the customs of the times, political objects; and the jurisdiction of the Amphictyons extended to matters which concerned the safety and internal peace of the confederacy. Hence the Amphictyonic laws, the provisions of which may be partly understood from the terms of the Amphictyonic oath. Confederacies and councils, similar to those of the Amphictyons, were common among the ancient Greeks. Such were those which united in federal republics the Greek colonists of Asia Minor, of the Æolian, Ionian, and Dorian nations. Such also was the confederacy of seven states whose council met in the temple of Neptune in the island of Calauria, and which is even called by Strabo (viii. 374) an Amphictyonic council.

The greater celebrity of the northern Amphictyons is attributable partly to the superior fame and authority of the Delphic Apollo; still more perhaps to their connection with powerful states which grew into importance at a comparatively late period. The migrating hordes, sent forth from the tribes of which originally or in very early times the confederacy was composed, carried with them their Amphictyonic rights, and thus at every remove lengthened the arms of the council. The great Dorian migration especially planted Amphictyonic cities in the remotest parts of Southern Greece. But this diffusion, whilst it extended its fame, was eventually fatal to its political authority. The early members, nearly equal

perhaps in rank and power, whilst they remained in the neighbourhood of Mounts Ceta and Parnassus, might be willing to submit their differences to the judgment of the Amphictyonic body. But the case was altered when Athens and Sparta became the leading powers in Greece. Sparta, for instance, would not readily pay obedience to the decrees of a distant council, in which the deputies of some inconsiderable towns in Doris sat on equal terms with their own. Accordingly in a most important period of Grecian history, during a long series of bloody contests between Amphictyonic states, we are unable to discover a single mark of the council's interference. On the other hand, we have from Thucydides (i. 112) a strong negative proof of the insignificance into which its authority had fallen. The Phocians (B.C. 448) possessed themselves by force of the temple of Apollo at Delphi; were deprived of it by the Lacedæmonians, by whom it was restored to the Delphians; and were again replaced by the Athenians. In this, which is expressly called by the historian a sacred war, not even an allusion is made to the existence of an Amphictyonic council. After the decay of its political power, there still remained its religious jurisdiction; but it is not easy to determine its limits or the objects to which it was directed. In a treaty of peace made (B. C. 421) between the Peloponnesians and the Athenians (Thucydides, v. 17), it was provided that the temple of Apollo at Delphi and the Delphians should be independent. This provision, however, appears to have had reference especially to the claims of the Phocians to include Delphi in the number of their towns, and not to have interfered in any respect with the superintendence of the temple and oracle, which the Amphictyons had long exercised in conjunction with the Delphians. We have seen that the Amphictyons were charged in the earliest times with the duty of protecting the temple and the worship of the god. But the right of superintendence, of regulating the mode of proceeding in consulting the oracle, in making the sacrifices, and in the celebration of the games, was apparently of much later origin, and

may, with some probability, be dated from the victory gained by Eurylochus and the Amphictyonic army. The exercise of this right had the effect of preserving to the council permanently a considerable degree of importance. In early times the Delphic god had enjoyed immense authority. He sent out colonies, founded cities, and originated weighty measures of various kinds. Before the times of which we have lately been speaking, his influence had been somewhat diminished; but the oracle was still most anxiously consulted both on public and private matters. The custody of the temple was also an object of jealous interest on account of the vast treasures contained within its walls.

The Greek writers, who notice the religious jurisdiction of the council, point out attention almost exclusively to Delphi; but it may be inferred from a remarkable fact mentioned by Tacitus (*Ann.* iv. 14), that it was much more extensive. The Samians, when petitioning in the time of the Emperor Tiberius for the confirmation of a certain privilege to their temple of Juno, pleaded an ancient decree of the Amphictyons in their favour. The words of the historian seem to imply that the decree was made at an early period in the existence of Greek colonies in Asia Minor, and he says that the decision of the Amphictyons on all matters had at that time pre-eminent authority.

The sacred wars, as they were called, which were originated by the Amphictyons in the exercise of their judicial authority, can here be noticed only so far as they help to illustrate the immediate subject of inquiry. The Cirrhæan war, in the time of Solon, has already been incidentally mentioned. The port of Cirrha, a town on the Crissæan bay, afforded the readiest access from the coast to Delphi. The Cirrhæans, availing themselves of their situation, grievously oppressed by heavy exactions the numerous pilgrims to the Delphic temple. The Amphictyons, by direction of the oracle, proclaimed a sacred war to avenge the cause of the god; that is, to correct an abuse which was generally offensive, and particularly injurious to the interests of the Delphians. Cirrha was destroyed,

the inhabitants were reduced to slavery, their lands consecrated to Apollo, and a curse was pronounced on all who should hereafter cultivate them. We are told that Solon acted a prominent part on this occasion, and that great deference was shown to his counsels. Mr. Mitford, indeed, has discovered without help from history, which is altogether silent on the subject, that he was the author of sundry important innovations, and that he in fact remodelled the constitution of the Amphictyonic body. He has even been able to catch a view of the secret intentions of the legislator, and of the political principles which guided him. But in further assigning to Solon the command of the Amphictyonic army, he is opposed to the direct testimony of the ancient historians.

From the conclusion of the Cirrhæan war to the time of Philip of Macedon, an interval exceeding two centuries, we hear little more of the Amphictyons, than that they rebuilt the temple at Delphi, which had been destroyed by fire B.C. 548; that they set a price on the head of Ephialtes, who betrayed the cause of the Greeks at Thermopylæ, and conferred public honours on the patriots who died there; and that they erected a monument to the famous diver Scyllias as a reward for the information which, as the story goes, he conveyed under water from the Thessalian coast to the commanders of the Grecian fleet at Artemisium. If Plutarch may be trusted, the power of the Amphictyons had not at this time fallen into contempt. When a proposition was made by the Lacedæmonians to expel from the council all the states which had not taken part in the war against the Persians, it was resisted successfully by Themistocles, on the ground that the exclusion of three considerable states, Argos, Thebes, and the Thessalians, would give to the more powerful of the remaining members a preponderating influence in the council, dangerous to the rest of Greece.

After having, for a long period, nearly lost sight of the Amphictyons in history, we find them venturing, in the fallen fortunes of Sparta, to impose a heavy fine on that state as a punishment for an old offence, the seizure of the Theban Cadmeia, the payment of which, how-

ever, they made no attempt to enforce. In this case, as well as in the celebrated Phocian war, the Amphictyonic council can be considered only as an instrument in the hands of the Thebans, who, after their successful resistance to Sparta, appear to have acquired a preponderating influence in it, and who found it convenient to use its name and authority, whilst prosecuting their own schemes of vengeance or ambition. Though the charge brought against the Phocians was that of impiety in cultivating a part of the accursed Cirrhæan plain, there is no reason to think that any religious feeling was excited, at least in the earlier part of the contest; and Amphictyonic states were eagerly engaged as combatants on both sides. For an account of this war the reader is referred to a general history of Greece. The council was so far affected by the result, that it was compelled to receive a new member, and in fact a master, in the person of Philip of Macedon, who was thus rewarded for his important services at the expense of the Phocians, who were expelled from the confederacy. They were, however, at a subsequent period restored, in consequence of their noble exertions in the cause of Greece and the Delphic god against the Gauls. It may be remarked, that the testimony of the Phocian general Philomelus, whatever may be its value, is rather in favour of the supposition that the council was not always connected with Delphi. He justifies his opposition to its decrees, on the ground that the right which the Amphictyons claimed was comparatively a modern usurpation. In the case of the Amphiſſians, whose crime was similar to that of the Phocians, the name of the Amphictyons was again readily employed; but Æschines, who seems to have been the principal instigator of the war, had doubtless a higher object in view than that of punishing the Amphiſſians for impiety.

The Amphictyonic council long survived the independence of Greece, and was, probably, in the constant exercise of its religious functions. So late as the battle of Actium, it retained enough of its former dignity at least to induce Augustus to claim a place in it for his

new city of Nicopolis. Strabo says that in his time it had ceased to exist. If his words are to be understood literally, it must have been revived; for we know from Pausanias (x. 8), that it was in existence in the second century after Christ. It reckoned at that time twelve constituent states, who furnished in all thirty deputies; but a preponderance was given to the new town of Nicopolis, which sent six deputies to each meeting; Delphi sent two to each meeting, and Athens one deputy: the other states sent their deputies according to a certain cycle, and not to every meeting. For the time of its final dissolution we have no authority on which we can rely.

It is not easy to estimate with much certainty the effects produced on the Greek nation generally by the institution of this council. It is, however, something more than conjecture that the country which was the seat of the original members of the Amphictyonic confederacy was also the cradle of the Greek nation, such as it is known to us in the historical ages. This country was subject to incursions from barbarous tribes, especially on its western frontier, probably of a very different character from the occupants of whom we have been speaking. In the pressure of these incursions, the Amphictyonic confederacy may have been a powerful instrument of preservation, and must have tended to maintain at least the separation of its members from their foreign neighbours, and so to preserve the peculiar character of that gifted people, from which knowledge and civilization have flowed over the whole western world. It may also have aided the cause of humanity; for it is reasonable to suppose that in earlier times differences between its own members were occasionally composed by interference of the council; and thus it may have been a partial check on the butchery of war, and may at least have diminished the miseries resulting from the cruel lust of military renown. In one respect its influence was greatly and permanently beneficial. In common with the great public festivals, it helped to give a national unity to numerous independent states, of which the Greek nation was composed. But it had a

merit which did not belong to those festivals in an equal degree. It cannot be doubted that the Amphictyonic laws, which regulated the originally small confederacy, were the foundation of that international law which was recognised throughout Greece; and which, imperfect as it was, had some effect in regulating beneficially national intercourse among the Greeks in peace and war, and, so far as it went, was opposed to that brute force and lawless aggression which no Greek felt himself restrained by any law from exercising towards those who were not of the Greek name. To the investigator of that dark but interesting period in the existence of the Greek nation which precedes its authentic records, the hints which have been left us on the earlier days of this council, faint and scanty as they are, have still their value. They contribute something to those fragments of evidence with which the learning and still more the ingenuity of the present generation are converting mythical legends into a body of ancient history.

ANARCHY (from the Greek *ἀναρχία*, *anárchia*, absence of government) properly means the entire absence of political government; the condition of a collection of human beings inhabiting the same country, who are not subject to a common sovereign. Every body of persons living in a *state of nature* (as it is termed) is in a state of anarchy; whether that state of nature should exist among a number of persons who have never known political rule, as a horde of savages, or should rise in a political society in consequence of resistance on the part of the subjects to the sovereign, by which the person or persons in whom the sovereignty is lodged are forcibly deprived of that power. Such intervals are commonly of short duration; but after most revolutions, by which a violent change of government has been effected, there has been a short period during which there was no person or body of persons who exercised the executive or legislative sovereignty,—that is to say, a period of anarchy.

*Anarchy* is sometimes used in a transferred or improper sense to signify the condition of a political society, in which,

according to the writer or speaker, there has been an undue remissness or supineness of the sovereign, and especially of those who wield the executive sovereignty. In the former sense, anarchy means the state of a body of persons among whom there is no political government; in its second sense, it means the state of a political society in which there has been a *deficient* exercise of the sovereign power. As an insufficiency of government is likely to lead to no government at all, the term *anarchy* has, by a common exaggeration, been used to signify the small degree, where it properly means the entire absence. [SOVEREIGNTY.]

ANATOMY ACT. Before the passing of 2 & 3 Will. IV. c. 75, on the 1st of August, 1832, the medical profession was placed in a situation at once anomalous and discreditable to the intelligence of the country. The law rendered it illegal for the medical practitioner or teacher of anatomy to possess any human body for the purposes of dissection, save that of murderers executed pursuant to the sentence of a court of justice, whilst it made him liable to punishment for ignorance of his profession; and while the charters of the medical colleges enforced the duty of teaching anatomy by dissection, the law rendered such a course impracticable. But as the interests of society require anatomy to be taught, the laws were violated, and a new class of offenders and new crimes sprung up as a consequence of legislation being inconsistent with social wants. By making anatomical dissection a penalty for crime, the strong prejudices which existed respecting dissection were magnified tenfold. This custom existed in England for about three centuries, having commenced early in the sixteenth century, when it was ordered that the bodies of four criminals should be assigned annually to the corporation of barber-surgeons. The 2 & 3 Will. IV. c. 75, repealed s. 4, 9 Geo. IV. c. 31, which empowered the court, when it saw fit, to direct the body of a person convicted of murder to be dissected after execution. Bodies are now obtained for anatomical purposes under the following regulations enacted in 2 & 3 Will. IV. c.

75, which is entitled 'An act for regulating Schools of Anatomy.' The preamble of this act recites that the legal supply of human bodies for anatomical examination was insufficient, and that in order further to supply human bodies for such purpose various crimes were committed, and lately murder, for the sole object of selling the bodies of the persons so murdered. The act then empowers the principal Secretary of State, and the Chief Secretary for Ireland, to grant a licence to practise anatomy to any member or fellow of any college of physicians or surgeons, or to any graduate or licentiate in medicine, or to any person lawfully qualified to practise medicine, or to any professor or teacher of anatomy, medicine, or surgery; or to any student attending any school of anatomy, on application countersigned by two justices of the place where the applicant resides, certifying that to their knowledge or belief such person is about to carry on the practice of anatomy. (s. 1.) Notice is to be given of the place where it is intended to examine bodies anatomically, one week at least before the first receipt or possession of a body. The Secretary of State appoints inspectors of places where anatomical examinations are carried on, and they make a quarterly return of every deceased person's body removed to each place in their district where anatomy is practised, distinguishing the sex, and the name and age. Executors and others (not being undertakers, &c.) may permit the body of a deceased person, lawfully in their possession, to undergo anatomical examination, unless, to the knowledge of such executors or others, such person shall have expressed his desire, either in writing or verbally during the illness whereof he died, that his body might not undergo such examination; and unless the surviving husband or wife, or any known relative of the deceased person shall require the body to be interred without. Although a person may have directed his body after death to be examined anatomically, yet if any surviving relative objects, the body is to be interred without undergoing such examination. (s. 8.) When a body may be lawfully removed for anatomical examination, such removal is not to take place

until forty-eight hours after death, nor until twenty-four hours' notice after death to the anatomical inspector of the district of the intended removal, such notice to be accompanied by a certificate of the cause of death, signed by the physician, surgeon, or apothecary who attended during the illness whereof the deceased person died; or if not so attended, the body is to be viewed by some physician, surgeon, or apothecary after death, and who shall not be concerned in examining the body after removal. Their certificate is to be delivered with the body to the party receiving the same for examination, who within twenty-four hours must transmit the certificate to the inspector of anatomy for the district, accompanied by a return stating at what day and hour and from whom the body was received, the date and place of death, the sex, and (as far as known) the name, age, and last abode of such person; and these particulars, with a copy of the certificate, are also to be entered in a book, which is to be produced whenever the inspector requires. The body on being removed is to be placed in a decent coffin or shell and be removed therein; and the party receiving it is to provide for its interment after examination in consecrated ground, or in some public burial-ground of that religious persuasion to which the person whose body was removed belonged; and a certificate of the interment is to be transmitted to the inspector of anatomy for the district within six weeks after the body was received for examination. Offences against the act may be punished with imprisonment for not less than three months, or a fine of not more than 50*l*.

The supply, under this act, of the bodies of persons who die friendless in poor-houses and hospitals and elsewhere, is said to be sufficient for the present wants of the teachers of anatomy. The enormities which were formerly practised by "resurrection-men" and "burkers" have ceased. The number of bodies annually supplied in London for the purposes of dissection amounts to 600.

ANCIENT DEMESNE. [MANOR.]  
 ANGLICAN CHURCH. [ESTABLISHED CHURCH OF ENGLAND AND IRELAND.]



ANNALS, in Latin *Annales*, is derived from *annus*, a year. Cicero, in his second book, 'On an Orator' (*De Oratore*, 12), informs us, that from the commencement of the Roman state down to the time of Publius Mucius, it was the custom for the Pontifex Maximus annually to commit to writing the transactions of the past year, and to exhibit the account publicly on a tablet (*in albo*) at his house, where it might be read by the people. Mucius was Pontifex Maximus in the beginning of the seventh century from the foundation of Rome. These are the registers, Cicero adds, which we now call the 'Annales Maximi,' the great annals. It is probable that these annals are the same which are frequently referred to by Livy under the title of the 'Commentarii Pontificum,' and by Dionysius under that of *ἱεραὶ δέλτοι*, or 'Sacred Tablets.' Cicero, both in the passage just quoted, and in another in his first book 'On Laws' (*De Legibus*), speaks of them as extremely brief and meagre documents. It may, however, be inferred from what he says, that parts of them at least were still in existence in his time, and some might be of considerable antiquity. Livy says (vi. 1) that most of the Pontifical Commentaries were lost at the burning of the city after its capture by the Gauls. It is evident, however, that they were not in Livy's time to be found in a perfect state even from the date of that event (B.C. 390); for he is often in doubt as to the succession of magistrates in subsequent periods, which it is scarcely to be supposed he could have been, if a complete series of these annals had been preserved.

The word annals, however, was also used by the Romans in a general sense; and it has been much disputed what was the true distinction between annals and history. Cicero, in the passage in his work 'De Oratore,' says, that the first narrators of public events, both among the Greeks and Romans, followed the same mode of writing with that in the 'Annales Maximi;' which he further describes as consisting in a mere statement of facts briefly and without ornament. In his work 'De Legibus' he characterizes history as something distinct from this, and

of which there was as yet no example in the Latin language. It belongs, he says, to the highest class of oratorical composition ("opus oratorium maxime").

This question has been considerably perplexed by the division which is commonly made of the historical works of Tacitus, into books of Annals and books called Histories. As what are called his 'Annals' are mainly occupied with events which happened before he was born, while in his 'History' he relates those of his own time, some critics have laid it down as the distinction between history and annals, that the former is a narration of what the writer has himself seen, or at least been contemporary with, and the latter of transactions which had preceded his own day.

Aulus Gellius (v. 18), in his discussion on the difference between Annals and History, says that some consider that both History and Annals are a record of events, but that History is properly a narrative of such events as the narrator has been an eye-witness of. He adds that Verrius Flaccus, who states that some people hold this opinion, doubts about its soundness, though Verrius thinks that it may derive some support from the fact that, in Greek, History (*ἱστορία*) properly signifies the obtaining of the knowledge of present events. But Gellius considers that all annals are histories, though all histories are not annals; just as all men are animals, but all animals are not men. Accordingly Histories are considered to be the exposition or showing forth of events; Annals, to contain the events of several successive years, each event being assigned to its year. The distinction which the historian Sempronius Asellio made is this, as quoted by Gellius—"Between those who had intended to leave annals, and those who had attempted to narrate the acts of the Roman people, there was this difference:—Annals only affected to show what events took place in each year, a labour like that of those who write diaries, which the Greeks call Ephemerides. To us it seemed appropriate not merely to state what had been done, but also with what design and on what principle it had been done." Accordingly Annals are materials for History. [HISTORY.]

Tacitus has himself in one passage intimated distinctly what he himself understood annals to be, as distinguished from history. In his 'Annals' (commonly so called) iv. 71, he states his reason for not giving the continuation and conclusion of a particular narrative which he had commenced, to be simply the necessity under which he had laid himself by the form of composition he had adopted of relating events strictly in the order of time, and always finishing those of one year before entering upon those of another. The substance of his remark is, that "the nature of his work required him to give each particular under the year in which it actually happened." This, then, was what Tacitus conceived to be the task which he had undertaken as a writer of annals, "to keep everything to its year." Had he been writing a history (and in the instance quoted above, he insinuates he had the inclination, if not the ability, for once to act the historian), he would have considered himself at liberty to pursue the narrative he was engaged with to its close, not stopping until he had related the whole. But remembering that he professed to be no more than an annalist, he restrains himself, and feels it to be his business to keep to the events of the year.

It is of no consequence that on other occasions Tacitus may have deviated somewhat from the strict line which he thus lays down for himself—that he may have for a moment dropped the annalist and assumed the historian. If it should even be contended that his narrative does not in general exhibit a more slavish submission to the mere succession of years than others that have been dignified with the name of historians, that is still of no consequence. He may have satisfied himself with the more humble name of an annalist, when he had a right to the prouder one of an historian; or the other works referred to may be wrongly designated histories. It may be, for instance, that he himself is as much an historian in what are called his 'Annals' as he is in what is called his 'History.'

In iii. 65, of his 'Annals,' Tacitus tells us that it formed no part of the plan of his 'Annals' to give at full length the sentiments and opinions of individuals,

except they were signally characterized either by some honourable or disgraceful traits. In chap. 22 of the treatise on Oratory, attributed to Tacitus, the author expresses his opinion of the general character of the style of ancient annals; and (*Annal.* xiii. 31) he carefully marks the distinction between events fit to be incorporated into annals and those which were only adapted to the *Acta Diurna*. [ACT.]

The distinction we have stated between history-writing and annal-writing seems to be the one that has been commonly adopted. An account of events digested into so many successive years is usually entitled, not a history, but annals. The 'Ecclesiastical Annals' of Baronius, and the 'Annals of Scotland,' by Sir David Dalrymple (Lord Hailes), are well-known examples. In such works so completely is the succession of years considered to be the governing principle of the narrative, that this succession is sometimes preserved unbroken even when the events themselves would not have required that it should, the year being formally enumerated although there is nothing to be told under it. The year is at least always stated with equal formality whether there be many events or hardly any to be related as having happened in it. In this respect annals differ from a catalogue of events with their dates, as, for instance, the 'Parian Chronicle.' The object of the latter is to intimate in what year certain events happened; of the former, what events happened in each year. The history of the Peloponnesian war, by Thucydides, has the character of annals. The events are arranged distinctly under each year, which is further divided into summers and winters. All political reflections are, for the most part, placed in the mouths of the various leaders on each side.

In the 'Rheinisches Museum für Philologie,' &c. ii. Jahrg. 2 heft. pp. 293, &c., there is a disquisition, by Niebuhr, on the distinction between History and Annals, in which he limits the latter nearly as has been done above. There is a translation of it in the sixth number (for May, 1833) of the 'Cambridge Philological Museum.'

It scarcely need be noticed that the term annals is popularly used in a very

loose sense for a record of events in whatever form it may be written—as when Gray speaks of—

“The short and simple annals of the poor.”

In the Romish church a mass said for any person every day during a whole year was anciently called an annal; and sometimes the same word was applied to a mass said on a particular day of every year. (Du Cange, *Glossarium ad Scriptores Mediæ et Infimæ Latinitatis*.)

ANNA'TES, from *annus*, a year, a sum paid by the person presented to a church living, being the estimated value of the living for a whole year. It is the same thing that is otherwise called *Primitiæ*, or First-Fruits. [FIRST-FRUIT.]

ANNUITY. An annuity consists in the payment of a certain sum of money yearly, which is charged upon the person or personal estate of the individual from whom it is due; if it is charged upon his real estate, it is not an annuity, but a rent. [RENT.] A sum of money payable occasionally does not constitute an annuity; the time of payment must recur at certain stated periods, but it is not necessary that these periods should be at the interval of a year; an annuity may be made payable quarterly, or half-yearly (as is very generally the case), or at any other aliquot portion of a year; and it may even be made payable once in two, three, twenty, or any other number of years.

It was not unusual among the Romans to give by way of legacy certain annual payments, which were a charge upon the heres or co-heredes: a case is recorded in which a husband binds his heredes to pay his wife, during her life, ten aurei yearly. The wife survived the husband five years and four months, and a question was raised, whether the entire legacy for the sixth year was due, and Modestinus gave it as his opinion that it was due. There were also cases in which the heres was bound to allow another yearly the use of a certain piece of land; but this bears no resemblance to the annuity of the English law, which, as stated above, is essentially a periodical payment in money. (*Digest*, xxxiii. tit.

1, *De Annis Legatis et Fideicommissis*, Domat's *Civil Law*, 2nd part, book iv. tit. 2, sec. 1.) In the middle ages annuities were frequently given to professional men as a species of retainer; and in more modern times they have been very much resorted to as a means of borrowing money. When the person who borrows undertakes, instead of interest, to pay an annuity, he is styled the *grantor*; the person who lends, being by the agreement entitled to receive the payments, is called the *grantee* of the annuity. This practice seems to have been introduced on the Continent with the revival of commerce, at a time when the advantages of borrowing were already felt, but the taking of interest was still strictly forbidden. In the fifteenth century contracts of this kind were decided by the popes to be lawful, and were recognised as such in France, even though every species of interest upon money borrowed was deemed usurious. (Domat's *Civil Law*, 1st part, book i. tit. 6.) The commercial states of Italy early availed themselves of this mode of raising money, and their example has since been followed in the national debts of other countries. [NATIONAL DEBT; FUNDS; STOCKS.]

An annuity may be created either for a term of years, for the life or lives of any persons named, or in perpetuity; and in the last case, though, as in all others, the annuity as to its security is personal only yet it may be so granted as to descend in the same manner as real property; and hence such an annuity is reckoned among incorporeal hereditaments.

A perpetual annuity, granted in consideration of a sum of money advanced, differs from interest in this, that the grantee has no right to demand back his principal, but must be content to receive the annuity which he has purchased, as long as it shall please the other party to continue it:—but the annuity is in its nature redeemable at the option of the grantor, who is thus at liberty to discharge himself from any further payments by returning the money which he has borrowed. It may, however, be agreed between the parties (as it generally has been in the creation of our own national debt, which consists chiefly of

annuities of this sort) that the redemption shall not take place for a certain number of years. The number of years within which, according to the present law of France, a perpetual annuity (*rente constituée en perpétuel*) may be made irredeemable, is limited to ten. (*Code Civil*, art. 1911.)

An annuity for life or years is not redeemable in the same manner; but it may be agreed by the parties to the contract that it shall be redeemable on certain terms; or it may afterwards be redeemed by consent of both parties; and where the justice of the case requires it (where there has been fraud, for instance, or the bargain is unreasonable), a court of equity will decree a redemption. When such an annuity is granted in consideration of money advanced, the annual payments may be considered as composed of two portions, one being in the nature of interest, the other a return of a portion of the principal, so calculated, that when the annuity shall have determined, the whole of the principal will be repaid. Annuities for life or years, being the only security that can be given by persons who have themselves a limited interest in their property, are frequently made in consideration of a loan. Besides this advantage, annuities for life, inasmuch as they are attended with risk, are not within the reach of the usury laws, and are therefore often used in order to evade them; and the legislature has accordingly required that certain formalities should be observed in creating them. It is enacted (by stat. 53 Geo. III. c. 141) "That every instrument by which an annuity for life is granted shall be null and void, unless within thirty days after the execution thereof there shall be enrolled in the High Court of Chancery a memorial containing the date, the names of the parties and witnesses, and the conditions of the contract; and if the lender does not really and truly advance the whole of the consideration money, that is, if part of it is returned, or is paid in notes which are afterwards fraudulently cancelled, or is retained on pretence of answering future payments; or if, being expressed to be paid in money, it is in fact paid in goods, the person charged

with the annuity (that is, the borrower) may, if any action should be brought against him for the payment of it, by applying to the court, have the instrument cancelled." The same statute also enacts that every contract for the purchase of an annuity, made with a minor, shall be void, and shall remain so, even though the minor, on coming of age, should attempt to confirm it. The provisions of this act are intended to be confined to cases where the annuity is granted in consideration of a loan.

Annuities may be, and very frequently are, created by will, and such a bequest is considered in law as a general legacy; and, in case of a deficiency in the estate of the testator, it will abate proportionably with the other legacies. The payment of an annuity may be charged either upon some particular fund (in which case if the fund fails the annuity ceases) or upon the whole personal estate of the grantor; which is usually effected by a deed of covenant, a bond, or a warrant of attorney. If the person charged with the payment of an annuity becomes bankrupt, the annuity may be proved as a debt before the commissioners, and its value ascertained, according to the provisions of the bankrupt act (6 Geo. IV. c. 16, § 54). The value thus ascertained becomes a debt charged upon the estate of the bankrupt; and hereby both the bankrupt and his surety are discharged from all subsequent payments.

If the person on whose life an annuity is granted dies between two days of payment, the grantee has no claim whatever in respect of the time elapsed since the last day of payment: from this rule, however, are excepted such annuities as are granted for the maintenance of the grantee; and the parties may in all cases, if they choose it, by an express agreement, provide that the grantee shall have a rateable portion of the annuity for the time between the last payment and the death of the person on whose life it is granted. On government annuities a quarter's annuity is paid to the executors of an annuitant, if they come in and prove the death. (*Comyns, Digest*, tit. "Annuity;" *Lunley, On Annuities*.)

ANNUITY, a term derived from the

Latin, *annus*, a year; signifying, in its most general sense, any fixed sum of money which is payable either yearly or in given portions at stated periods of the year. Thus, the lease of a house, which lets for 50*l.* a year, and which has 17 years to run, is to the owner an annuity of 50*l.* for 17 years. In an ordinary use of the term, it signifies a sum of money payable to an individual yearly, during life. In the former case, it is called, in technical language, an *annuity certain*; and in the latter, a *life annuity*.

It is evident that every beneficial interest, which is either to continue for ever, or to stop at the end of a given time, such as a freehold, a lease, a debt to be paid in yearly instalments, &c., is contained under the general head of an *annuity certain*, while every such interest which terminates with the lives of any one or more individuals, all that in law is called a *life-estate*, and all salaries, as well as what are most commonly known by the name of life annuities, fall under the latter term. Closely connected with this part of the subject are *COPYHOLDS* (which see), in which an estate is held during certain lives, but in which there is a power of renewing any life when it drops, that is, substituting another life in place of the former, on payment of a fine—*REVERSIONS*, or the interest which the next proprietor has in any estate, &c., after the death of the present—and *life-insurance*, in which the question is, what annuity must A. pay to B. during his life, in order that B may pay a given sum to A's executors at his death?

If money could not be improved at interest, the value of an annuity certain would simply be the yearly sum multiplied by the number of years it is to continue to be paid. Thus a lease for 3 years of a house which is worth 100*l.* a year, might either be bought by paying the rent yearly, or by paying 300*l.* at once. A life annuity, in such a case, will be worth an annuity certain, continued for the average number of years lived by individuals of the same age as the one to whom the annuity is granted. But if compound interest be supposed, which is always the case in real transactions of this kind, the landlord, in the case of the

annuity certain just alluded to, must only receive such a sum, as when put out to interest, with 100*l.* subtracted every year for rent, will just be exhausted at the end of 3 years. To exemplify this, let us suppose that money can be improved at 4 per cent. In Table I., in the column headed 4 p. c. (4 per cent.), we find 2·775 opposite to 3 in the first column, by which is meant that the present value of an annuity of one pound to last 3 years is 2·775*l.*, or  $2\frac{775}{1000}$ *l.* The present value of an annuity of 100*l.* under the same circumstances is therefore 277·5*l.*, or 277*l.* 10*s.* This is the value of a lease for three years corresponding to a yearly rent of 100*l.* The landlord who receives this, and puts it out at 4 per cent., will, at the end of one year, have 288*l.* 12*s.* From this he subtracts 100*l.* for the rent which has become due, and puts out the remainder, 188*l.* 12*s.*, again at 4 per cent. At the end of a year this has increased to 196*l.* 2*s.* 10½*d.*, from which 100*l.* is again subtracted for rent. The remainder, 96*l.* 2*s.* 10½*d.*, again put out at interest, becomes at the end of the year 99*l.* 19*s.* 9*d.*, within three pence of the last year's rent. This little difference arises from the imperfection of the Table, which extends to three decimal places only.

TABLE I.—*Present Value of an Annuity of One Pound.*

Years.	3 p. c.	3½ p. c.	4 p. c.	5 p. c.
1	·971	·966	·962	·952
2	1·913	1·900	1·886	1·859
3	2·829	2·802	2·775	2·723
4	3·717	3·673	3·630	3·546
5	4·580	4·515	4·452	4·339
6	5·417	5·329	5·242	5·076
7	6·230	6·115	6·002	5·786
8	7·020	6·874	6·733	6·463
9	7·786	7·608	7·435	7·103
10	8·530	8·317	8·111	7·722
15	11·938	11·517	11·118	10·380
20	14·877	14·212	13·590	12·462
25	17·413	16·482	15·622	14·094
30	19·600	18·392	17·292	15·372
40	23·115	21·355	19·793	17·159
50	25·730	23·456	21·482	18·256
60	27·676	24·945	22·623	18·929
70	29·123	26·000	23·395	19·343
For ever	33·333	28·571	25·000	20·000

To find the present value of an annuity of 1*l.* per annum continued for 10 years, interest being at 5 per cent., look in the column headed 5 p. c., and there,

opposite to 10 in the first column, will be found the value 7·722*l.*, or 7*l.* 14*s.* 6½*d.* This would be commonly said to be 7·722 years' purchase of the annuity. For a convenient rule for reducing decimals of a pound to shillings and pence, and the converse, see the 'Penny Magazine,' No. 52. It may also be done by the following table:—

TABLES II. & III.—*For reducing Decimals of a Pound to Shillings and Pence, and the converse.*

Dec.	s.	Dec.	s.	d.	Dec.	d.
·1	2	·01	0	2½	·001	0½
·2	4	·02	0	5	·002	0½
·3	6	·03	0	7½	·003	0½
·4	8	·04	0	9½	·004	1
·5	10	·05	1	0	·005	1½
·6	12	·06	1	2½	·006	1½
·7	14	·07	1	5	·007	1½
·8	16	·08	1	7½	·008	2
·9	18	·09	1	9½	·009	2½

s.	Dec.	d.	Dec.	f.	Dec.
1	·05	1	·004	½	·001
2	·1	2	·008	½	·002
3	·15	3	·013	½	·003
4	·2	4	·017		
5	·25	5	·021		
6	·3	6	·025		
7	·35	7	·029		
8	·4	8	·033		
9	·45	9	·037		
10	·5	10	·042		
		11	·046		

For example, what is 665*l.* in shillings and pence?

TABLE II.	·6	is	£0 12 0
	·06	"	1 2½
	·005	"	1½
	·665		£0 13 3½

Again, what is 17*s.* 10½*d.* in decimals of a pound?

TABLE III.	£0 10 0	is	·5
	7 0	"	·35
	10	"	·42
	½	"	·003
	£0 17 10½		·895

These conversions are not made with perfect exactness, as only three decimal places are taken. The error will never be more than one farthing.

To use Table I. where the number of years is not in the table, but is intermediate between two of those in the table,

such a mean must be taken between the annuities belonging to the nearest years above and below the given year, as the given year is between those two years. This will give the result with sufficient nearness. We must observe, that no tables which we have room to give are sufficient for more than a first guess, so to speak, at the value required, such as may enable any one who is master of common arithmetic, not to form a decisive opinion on the case before him, but to judge whether it is worth his while to make a more exact inquiry, either by taking professional advice or consulting larger tables. As an example of the case mentioned, suppose we ask for the value of an annuity of 1*l.* continued for 12 years, interest being at 4 per cent. We find in Table I., column 4 per cent.

For	10 years	8·111
"	15 "	11·118

Difference 3·007

Since 5 years adds 3·007 to the value of the annuity, every year will add about one-fifth part of this, or 601, and 2 years will add about 1·202. This, added to 8·111, gives 9·313. The real value is more near to 9·385, and the error of our table is 7 out of 9·313, or about the 133rd part of the whole. The higher we go in the table, the less proportion of the whole will this error be.

The last line in Table I. gives the value of the annuity of 1*l.* continued for ever: for example, at 5 per cent., the value of 1*l.* for ever, or, as it is called, a *perpetuity* of 1*l.*, is 20*l.* This is the sum which at 5 per cent. yields 1*l.* a-year in interest only, without diminution of the principal. We see that an annuity for a long term of years differs very little in present value from the same continued for ever: for example, 1*l.* continued for 70 years at 4 per cent. is worth 23·395*l.*, while the perpetuity at the same rate is worth only 25*l.* Hence the present value of an annuity which is not to begin to be paid till 70 years have elapsed, but is afterwards to be continued for ever, is 1·605 at 4 per cent.: which sum improved during the 70 years, would yield the 25*l.* necessary to pay the annuity for all years succeeding.

TABLE IV.—Amount of an Annuity of One Pound.

Years.	3 p. c.	3½ p. c.	4 p. c.	5 p. c.
1	1·000	1·000	1·000	1·000
2	2·030	2·035	2·040	2·050
3	3·091	3·106	3·122	3·153
4	4·184	4·215	4·246	4·310
5	5·309	5·362	5·416	5·526
6	6·468	6·550	6·633	6·802
7	7·662	7·779	7·898	8·142
8	8·892	9·052	9·214	9·549
9	10·159	10·368	10·583	11·027
10	11·464	11·731	12·006	12·578
15	18·599	19·296	20·024	21·579
20	26·870	28·280	29·778	33·066
25	36·459	38·950	41·646	47·727
30	47·575	51·623	56·085	66·439
40	75·401	84·550	95·026	120·800
50	112·797	130·998	152·667	209·348
60	163·053	196·517	237·991	353·5·4
70	230·594	288·938	364·290	588·529

In this Table we see what would be possessed by the receiver of an annuity at the end of his term, if he put each year's annuity out at interest so soon as he received it. For example, an annuity of 1*l.*, in 40 years, at 5 per cent., amounts to 120·8*l.*, which includes 40*l.* received altogether at the end of the different years, and 80·8*l.* the compound interest arising from the first year's annuity, which has been 39 years at interest, the second year's annuity, which has been 38 years at interest, and so on, down to the last year's annuity, which has only just been received. When the annuity is payable half-yearly or quarterly, its present value is somewhat greater than that given in the preceding Table. For the annuitant, receiving certain portions of his annuity sooner than in the case of yearly payments, gains an additional portion of interest. Since 4 per cent. is 2 per cent. half-yearly and 1 per cent. quarterly, and since every term contains twice as many half-years as years, and four times as many quarters, it is evident that an annuity of 100*l.* a-year, payable half-yearly, at 4 per cent., for 10 years, is the same in present value as one of 50*l.* per annum, payable yearly, at 2 per cent., for 20 years. Again, 100*l.* a-year, payable quarterly for 10 years, money being at 4 per cent., is equivalent to an annuity of 25*l.*, payable yearly for 40 years, money being at 1 per cent.

The principles on which the calculation

of life annuities depends will be explained in the articles LIFE INSURANCE and BILLS OF MORTALITY. Let us suppose 100 persons, of the same age, buy a life annuity at the same office. Let us also suppose it has been found out, that of 100 persons at that age, 10 die in the first year, on the average, 10 more in the second year, and so on. If then it can be relied upon that 100 persons will die nearly in the same manner as the average of mankind, or at least that in such a number the longevity of some will be compensated by the unexpected death of others, the fair estimation of the value of a life annuity to be granted to each may be made as follows:—To make the question more distinct, let us suppose the bargain to be made on the 1st of January, 1844, so that payment of the annuities is due to the survivors on new-year's day of each year. Moreover let each year's annuity be made the subject of a separate contract. The first question is, what ought each individual to pay in order that he may receive the annuity of 1*l.*, if he survives in 1845. By the general law of mortality, we suppose that only 90 will remain to claim, who will, therefore, receive 90*l.* among them, the remaining 10 having died in the interval. It is sufficient, therefore, to meet the claims of 1845, that the whole 100 pay among them, January 1, 1844, such a sum as will, when put out at interest (suppose 4 per cent.) amount to 90*l.* on January 1, 1845. This sum is 86·654*l.*, and its hundredth part is 86654*l.*, which is, therefore, what each should pay to entitle himself to receive the annuity in 1845. There will be only 80 to claim in 1846, and, therefore, the whole 100 must among them pay as much as will, put out at 4 per cent. for 2 years, amount to 80*l.* This sum is 73·968*l.*, and its hundredth part is 73968*l.*, which is, therefore, what each must pay, in order to receive the annuity, if he lives, in 1846. The remaining years are treated in the same way, and the sum of the shares of each individual for the different years, is the present value of an annuity for his life. We must observe, that in the term *value of an annuity* it is always implied that the first annuity becomes payable at the expira-

tion of a year after the payment of the purchase-money.

The value of a life annuity depends, therefore, upon the manner in which it is presumed a large number of persons, similarly situated with the buyer, would die off successively. Various Tables of these *decrements of life*, as they are called, have been constructed, from observations made among different classes of lives. Some make the mortality greater than others; and of course, Tables which give a large mortality, give the value of the annuity smaller than those which suppose men to live longer. Those who buy annuities would, therefore, be glad to be rated according to tables of high mortality or low expectation of life; while those who sell them would prefer receiving the price indicated by tables which give a lower rate of mortality. In insurances the reverse is the case: the shorter the time which a man is supposed to live, the more must he pay the office, that the latter may at his death have accumulated wherewithal to pay his executors. We now give in Table V. the values of annuities according to three of the most celebrated Tables.

TABLE V.—*Present Value, or Purchase-money, of a Life Annuity.*

Northampton.				Carlisle.			Gov.M. Gov.F.		
Age.	3.p.c.	4.p.c.	5.p.c.	3.p.c.	4.p.c.	5.p.c.	4.p.c.	4.p.c.	4.p.c.
0	12.3	10.3	8.9	17.3	14.3	12.1			
5	20.5	17.2	14.8	23.7	19.6	16.6	19.3	20.0	
10	20.7	17.5	15.1	23.5	19.6	16.7	18.8	19.7	
15	19.7	16.8	14.6	22.6	19.0	16.2	18.0	19.1	
20	18.6	16.0	14.0	21.7	18.4	15.8	17.3	18.6	
25	17.8	15.4	13.6	20.7	17.6	15.3	16.9	18.1	
30	16.9	14.8	13.1	19.6	16.9	14.7	16.4	17.5	
35	15.9	14.0	12.5	18.4	16.0	14.1	15.7	16.9	
40	14.8	13.2	11.8	17.1	15.1	13.4	14.9	16.2	
45	13.7	12.3	11.1	15.9	14.1	12.6	13.8	15.3	
50	12.4	11.3	10.3	14.3	12.9	11.7	12.4	14.2	
55	11.2	10.2	9.4	12.4	11.3	10.3	11.0	12.8	
60	9.8	9.0	8.4	10.5	9.7	8.9	9.7	11.3	
65	8.3	7.8	7.3	8.9	8.3	7.8	8.2	9.6	
70	6.7	6.4	6.0	7.1	6.7	6.3	6.8	7.9	
75	5.2	5.0	4.7	5.5	5.2	5.0	5.4	6.3	
80	3.8	3.6	3.5	4.4	4.2	4.0	3.8	4.9	
85	2.6	2.5	2.5	3.2	3.1	3.0	2.3	3.8	
90	1.8	1.8	1.7	2.5	2.4	2.3	1.3	2.1	
95	.2	.2	.2	2.8	2.7	2.6	.6	1.0	

The first of these is calculated from the Northampton Table, formed by Dr. Price, from observations of burials, &c., at Northampton. As compared with all other Tables of authority, it gives too

high a mortality at all the younger and middle ages of life, and, consequently, too low a value of the annuity. The second is from the Carlisle Table, formed by Mr. Milne, from observations made at Carlisle. It gives much less mortality than most other Tables, and, therefore, gives higher values of the annuities; but it has since been proved to represent the actual state of life among the middle classes, in the century now ending, with much greater accuracy than could have been supposed, considering the local character of the observations from which it was derived. The third table is that constructed by Mr. Finlaison, from the observation of the mortality in the government tontines and among the holders of annuities granted by government in redemption of the national debt, and differs from the former two in distinguishing the lives of males from those of females. Most observations hitherto published unite in confirming the fact, that females, on the average, live longer than males, and in the annuities now granted by government, a distinction is made accordingly. The mean between the values of annuities on male and female lives, according to the Government Tables, agrees pretty nearly with the Carlisle Tables, the rate of interest being the same.

For the materials of Table V. we are indebted to the works of Dr. Price, on *Reversionary Payments*; of Mr. Milne, on *Annuities and Insurances*; and to Mr. Finlaison's *Report to the House of Commons on Life Annuities*; to all of which we refer the reader. The tables are of course very much abridged.

To use the Table V., suppose the value of an annuity of 100*l.* a-year, on a life aged 35, is required, interest being at 4 per cent., which is nearly the actual value of money. We find in the column marked 4 per cent., opposite to 35, under the Northampton Tables 14.0, under the Carlisle 16.0, and under the Government Tables 15.7 or 16.9, according as the life is male or female. These are the number of pounds which ought to buy an annuity of 1*l.*, according to these several authorities; and taking each of them 100 times, we have:—



Northampton Table . . .	1400l.
Carlisle Table . . . . .	1600l.
Government Table (males)	1570l.
Government Table (females)	1690l.

We cannot suppose that the annuity could be bought for less than would be required by the Carlisle Tables.

To find the value of an annuity on a life whose age lies between two of those given in the table, the process must be followed which has been already explained in treating of annuities certain.

An annuity on two joint lives is one which is payable only so long as both the persons on whose lives it is bought are alive to receive it.

TABLE VI.—*Present Value, or Purchase-money, of an Annuity of One Pound on two Joint Lives.*

Carlisle.—4 per cent.

Age.	0.	10.	20.	30.	40.	50.	60.	70.
0	8.9	12.3	11.7	10.9	9.9	8.6	6.6	4.7
5	16.8	16.5	15.6	14.4	12.9	10.5	7.8	5.0
10	17.0	16.3	15.2	13.8	12.0	9.2	6.5	4.1
15	16.3	15.5	14.3	12.9	10.5	7.9	5.1	3.0
20	15.6	14.7	13.6	11.8	9.0	6.4	4.1	2.4
25	14.8	13.8	12.5	10.3	7.8	5.0	3.0	2.6
30	13.9	12.9	11.4	8.8	6.3	4.0	2.3	1.6
40	12.1	10.9	8.6	6.2	3.9	2.3	1.6	
50	10.1	8.1	6.0	3.9	2.3	1.6		
60	6.9	5.3	3.6	2.1	1.5			
70	4.4	3.1	1.9	1.5				
80	2.4	1.6	1.3					

Northampton.—4 per cent.

Age.	0.	10.	20.	30.	40.	50.	60.	70.
1	8.3	10.8	10.1	9.4	8.6	7.5	6.1	4.4
5	13.6	13.5	12.6	11.7	10.5	8.9	7.0	4.6
10	14.3	13.4	12.6	11.5	10.1	8.3	6.0	3.5
15	13.4	12.6	11.8	10.6	9.1	7.1	4.7	2.5
20	12.5	11.9	10.9	9.6	8.0	5.8	3.4	1.7
25	11.9	11.2	10.2	8.8	6.9	4.6	2.4	0.9
30	11.3	10.5	9.3	7.8	5.7	3.4	1.7	
40	9.8	8.8	7.5	5.6	3.3	1.7		
50	8.1	7.0	5.3	3.2	1.7			
60	6.2	4.9	3.1	1.6				
70	4.1	2.8	1.5					
80	2.1	1.3						

The preceding table gives the results of the Carlisle and Northampton Tables on the value of this species of annuity, interest being at 4 per cent. The first column shows the age of the *younger* life, and the horizontal headings are *not* the age of the elder life, but the excess of the age of the elder life above that of the younger. For example, to know the value of an annuity in two joint lives,

aged 25 and 55, in which the difference of age is 30 years. In the Carlisle Table *opposite* to 25, the *younger*, and under 30, the *difference*, we find 10.3; and 8.8 in the Northampton. For the value of an annuity of 100l., the first tables give, therefore, 1030l., and the second 880l.

The value of an annuity on the longest of two lives, that is, which is to be payable as long as either of the two shall be alive to receive it, is found by adding together the values of the annuity on the two lives separately considered, and subtracting the value of the annuity on the joint lives. For the above species of annuity puts the office and the parties in precisely the same situation as if an annuity were granted to each party separately, but on condition that one of the annuities should be returned to the office so long as both were alive, that is, during their joint lives. For example, let the ages be 25 and 55 as before, and let the Carlisle Table be chosen, interest being at 4 per cent., we have then:—

TABLE V.—Annuity at age 55 . . .	11.3
Ditto 25 . . .	17.6

Sum . . .

28.9

TABLE VI.—Joint Annuity, 55 & 25 . . .	10.3
----------------------------------------	------

Difference . . .

18.6

The value, therefore, of an annuity of 1l. per annum on the survivor is 18.6l.

The value of an annuity which is not to be payable till either one or other of two persons is dead, and which is to continue during the life of the survivor, is found as in the last case, only subtracting *twice* the value of the joint annuity, instead of that value itself. In the preceding case it is 8.3l. For this case only differs from the preceding, in that the annuity is not payable while both are alive, that is, during the *joint* lives. Consequently the value in this case is less than that in the last, by the value of an annuity on the joint lives.

The value of an annuity to be paid to A from and after the death of B, if the latter should happen to die first, is the value of an annuity on the life of A, diminished by the value of an annuity on the joint lives of A and B. For the situation is exactly the same as if the

office granted an annuity to A, to be returned as long as both should live. The ages and Table being as before, and the life on whose survivorship the annuity depends being that aged 25, we have:—

TABLE V.—Annuity at age 25 . . . 17·6

TABLE VI.—Joint annuity, 25 & 55 . . . 10·3

Difference . . . 7·3

whence the value of the required annuity of 1*l.* is 7·3*l.*

The following Table, extracted with abridgment from Morgan on *Insurances*, deduced from the Northampton Table, with interest at 4 per cent., gives the average sum to which the savings of an individual may be expected to amount at the end of his life, improved at compound interest from the time he begins to lay by:—

TABLE VII.—*Probable Amount of One Pound laid by yearly, and improved to the end of Life.*

Age.	Amt.	Age.	Amt.	Age.	Amt.	Age.	Amt.
0	137·8	25	79·2	50	29·5	75	7·2
5	159·1	30	66·0	55	23·6	80	4·8
10	137·9	35	54·6	60	18·5	85	3·2
15	114·1	40	44·9	65	14·1	90	2·0
20	94·5	45	36·6	70	10·3		

That is to say, according to the Northampton Tables, if a person were, at the age of 26 (that is, a year after 25), to begin laying by 100*l.* a year at interest, he might expect the amount at the end of his life to be 79·2*l.* for each pound laid by yearly; or 7920*l.* Or, to speak more strictly, if 100 persons were to do this, they might expect that the average amount of their savings, reckoning the accumulations at their deaths, would be 7920*l.* each. As we have already observed, the mortality of the Northampton Table is greater than the fact, and the average accumulations would be greater, from young ages considerably greater, than those shown in the preceding table.

We have seen that the security of the method for estimating the value of life annuities depends upon the presumption that the average mortality of the buyers is known. This average cannot be expected to hold good, unless a large number of lives be taken. Therefore, the

granting of a single annuity, or of a few annuities, as a commercial speculation, would deserve no other name than gambling, even though the price demanded should be as high as that given in any tables whatsoever.

In the preceding tables, we would again remark, that our object has been simply to furnish the means of giving a moderately near determination of a few of the most simple cases. We should strongly recommend every one not to venture on important transactions without professional or other advice on which he can depend, unless he himself fully understands the principles on which tables are constructed. The liability to error, even in using the most simple table, is very great, without considerable knowledge of the subject; and most cases which arise in practice contain some circumstances peculiar to themselves, which have not and could not have been provided for in the general rules.

The following references to works on this subject may be found useful:—

ANNUITIES CERTAIN. 1. Smart's *Tables of Interest*, &c., London, 1726. There is an edition published in 1780, which is said to be very incorrect. The values for the intermediate half-years given in this work are not correctly the values of the annuities on the supposition of half-yearly payments; in other respects it is to be depended upon. 2. Corbaux, *Doctrine of Compound Interest*, &c., London, 1825. 3. Baily, *Doctrine of Interest and Annuities*, London, 1808. Smart's Tables are republished in this work from the correct edition. Works on *life-annuities* generally contain principles and tables for the calculation of annuities certain.

LIFE ANNUITIES. 1. Price, *Observations on Reversionary Payments*, &c. edited by W. Morgan, London, 1812. (Seventh Edition.) 2. Baily, *on Life Annuities and Assurances*, London, 1810. 3. Milne, *On the Valuation of Annuities and Assurances*, &c., London, 1815. 4. Morgan, *on the Principles of Assurance, Annuities, &c.*, London, 1821. 5. Davies' *Tables of Life Contingencies*, London, 1825. 6. Finlaison, *On the Evidence and Elementary Facts on which Tables of Life Annuities are Founded*. Printed by the

House of Commons, 31st March, 1829.  
7. Gompertz, *Estimation of the value of Life Contingencies*, in *Philosophical Transactions*, 1820.

ANNUITY, SCOTCH. The 53 Geo. III. c. 131, does not extend to Scotland. In that part of the country a fixed sum per annum paid periodically, though secured on heritable property, is called an annuity. Such an annuity is generally secured for life, and it may either be created by reservation in a transfer of the absolute property of the lands, thus constituting a burden on the new proprietor's title, or it may be granted by the absolute proprietor, the annuitant making his title real, as in the case of an absolute estate in land, by an "infestment." Provisions to widows and children may be thus secured. This species of security on land is to be distinguished from an annual-rent right, which has a reference to a capital sum, and was generally the form in which the payment of the interest of money lent on heritable security was made a real burden on the lands before the more effective security was devised of making a redeemable disposition of the lands themselves to the creditor. The annual-rent right had its origin in the laws against usury. The taking of interest on a sum borrowed was illegal, but an irredeemable annuity was not affected by the law; and thus the lender was invested with a perpetual estate in the land. The form used for this purpose was afterwards, as above stated, brought in to aid of the heritable bond, but it is now seldom employed. When the obligor of an annuity became bankrupt, there was until lately no statutory provision in Scotland for ranking the annuity creditor, *i. e.* for enabling him to prove. The Court of Session was in use to interpose equitably to allow the annuitant to draw a dividend on the value of the annuity. By 2 & 3 Vict. c. 41, §§ 40 and 41, provisions similar to those of the 6 Geo. IV. c. 16, §§ 54 and 55, relative to the claims of annuitants against the bankrupt estate of the principal debtor, and against sureties, were applied to Scotland.

ANNUS DELIBERANDI, in the law of Scotland, is the term of a year

immediately following the time of the death of the proprietor of heritable property, allowed to the heir that he may make up his mind whether he will accept the succession with the burden of his predecessor's debts. Within that time he cannot be compelled to adopt an alternative unless he has expressly or virtually resigned the privilege. The practice is adopted from the title of the Pandects, 'De jure deliberandi,' xxviii. tit. 8. The term of a year was fixed by a constitution of Justinian, *Cod. vi. tit. 30, § 19.*

ANTI-LEAGUE. [LEAGUE.]

APANAGE (*Apanagium*, *Apanamentum*), the provision of lands or feudal superiorities assigned by the kings of France for the maintenance of their younger sons.

Some of the proposed etymologies of the word apanage are mentioned by Richet, *Dictionnaire de la Langue Française*.

The prince to whom the portion was assigned was called *apanagiste*, or *apanager*; and he was regarded by the ancient law of that country as the proprietor of all the seignories dependent on the apanage, to whom the fealty (*foi*) of all subordinate feudatories within the domain was due, as to the lord of the "dominant fief."

Under the first two races of French kings, the children of the deceased king usually made partition of the kingdom among them; but the inconvenience of such a practice occasioned a different arrangement to be adopted under the dynasty of the Capets, and the crown descended entire to the eldest son, with no other dismemberment than the severance of certain portions of the dominions for the maintenance of the younger branches of the family. Towards the close of the thirteenth century the rights of the apanagiste were still further circumscribed; and at length it became an established rule, which greatly tended to consolidate the royal authority in that kingdom, that, upon the failure of lineal heirs male, the apanage should revert to the crown.

The time at which this species of provision was first introduced into France, the source from which it was borrowed,

and the origin of the term, are matters on which French writers are not agreed. (Pasquier's *Recherches*, lib. ii. cap. 18.; lib. viii. cap. 20; Calvini, *Lex Jurid.* "Appanagium;" Ducange, *Gloss.* "Appanamentum;" Pothier's *Traité des Fiefs*; and Henault's *Hist. de France*, Anno 1283.)

"It is evident," says Mr. Hallam, "that this usage, as it produced a new class of powerful feudatories, was hostile to the interests and policy of the sovereign, and retarded the subjugation of the ancient aristocracy. But an usage coeval with the monarchy was not to be abrogated, and the scarcity of money rendered it impossible to provide for the younger branches of the royal family by any other means." . . . "By means of their apanages and through the operation of the Salic law, which made their inheritance of the crown a less remote contingency, the princes of the blood-royal in France were at all times (for the remark is applicable long after Louis XI.) a distinct and formidable class of men, whose influence was always disadvantageous to the reigning monarch, and, in general, to the people." (*Middle Ages*, vol. i. p. 121, 2nd edit.)

By a law of 22nd November, 1790, it was enacted, that in future no apanage *real* should be granted by the crown, but that the younger branches of the royal family of France should be educated and provided for out of the civil list until they married or attained the age of twenty-five years: and that then a certain income called *rentes apanagères* was to be granted to them, the amount of which was to be ascertained by the legislature for the time being.

By a law of March 2, 1832, which regulates the civil list of the present king of the French, it is provided, that in case of the insufficiency of the private domain of the crown, the dotations of the younger sons of the king and of the princesses his daughters shall be subsequently arranged by special laws. Before this law, the head of the house of Orleans was in possession of all that remained of the ancient apanage of his house, in virtue of art. 4 of the law of 15th January, 1825, according to which the property restored to the

branch of Orleans in execution of several royal ordinances of 1814, would continue to be possessed by the chief of the Orleans branch until extinction of male issue, when the property would return to the state. The conditions attached, according to the old law, to precedents, and the law of 1825, to the possession of the Orleans apanage, were as follows:—1. The prince apanagist owed an allowance to his sons and brothers, and a portion to his daughters and sister. 2. If the prince came to the throne, his apanage was united to the crown domain, from which it was not distinct before 1791. 3. This opened to the princes whom it deprived of their claims on the apanage, a similar claim for themselves and their descendants on the domain of the crown. The law of 15th Jan. 1825, formally maintained these conditions and rights. At the revolution of 1830 the apanage of Orleans was united to the crown, which gave the younger princes a claim for compensation from the country, recognised by the 21st art. of the law of March 2, 1832. This claim, according to the terms of the article, is only admissible when the private domain of the crown is insufficient, and the right is co-existent only with the insufficiency. (*Moniteur Universel*, 30th June, 1844.) No allowance from the state has yet been made to the family of the present King of the French.

The system of Apanages was mainly formed in Germany by the high nobility. An apanage is there defined to be a provision for the proper maintenance of the younger members of a reigning house upon the establishment of the law of primogeniture, and out of the property which is subjected to this law of descent. In the middle ages, the German princes and nobles contrived to make those powers hereditary and a kind of private property, which were originally only offices granted to them by the emperor; and it followed as a natural consequence of this change, that they applied the same principles to the lands which were subject to their jurisdiction. They began to divide these lands according to their pleasure, and they soon became reduced to such small portions as to be insufficient for the maintenance of the dignity of those to whose

several shares they fell. In course of time it became the policy of the members of a princely or noble family to prevent such further division, and the consequent weakening of their power. In some cases contracts were made among several reigning princes, by which their territories were immediately formed into one body, or by which it was provided that, after the death of one reigning prince, the succession should be continued undivided in the person of some other. In other cases, a father, with the consent of his sons, made an arrangement by which the succession to the property should be undivided. By compact also and testamentary provision against the alienation of such property, the quality of *Fideicommissum* was given to it. But to get rid of all the evils of divided succession, it was necessary that the administration also of the principality should belong exclusively to one person. It was an old fashion to provide for the daughters by a pension or payment in money, and the custom now increased of providing the younger sons also with such a pension, or with some portion of the family lands, without giving them a full independent sovereignty; and a fixed order of succession was established, by testament or other mode, with the approbation of the emperor. Thus the law of primogeniture was established as the principle which determined the order of succession in the principalities of Germany, and at the same time the younger male members were provided for in the manner stated above. The provision for the younger members was called "deputat" and by various other names till the seventeenth century, when the French expression "apanage" was introduced into use. The word "paragium" also, which in France signified a smaller part of the feud that had been appropriated to a younger son, was used and applied to those cases where the income of a portion of the territory was made Deputat. The allowance which younger sons and their descendants have thus the right to claim from the ruling prince or possessor of the family *Fideicommissum* is generally fixed more precisely by family arrangements. A father who possesses an apanage, as a general rule

transmits his apanage to his legitimate offspring by an equal marriage (not a marriage of disparagement), and in case there is no such offspring, the apanage reverts to the reigning prince. There are also cases, though much more rare, in which an individual received an apanage on the condition that it reverted on his death.

The name Apanage is now also given to the allowance assigned to the princes of a reigning house for their proper maintenance out of the public chest. Such apanages are introduced in those cases where a civil list is established, and the property originally intended for the support of the members of the reigning family has either been converted wholly or partly into public property, or is administered as public property; and these apanages are substituted for the claims of the younger members of such families as apaganistes on him who holds the family *Fideicommissum*. The transference of such claims to the public chest is accordingly founded on a right of which the persons entitled to it cannot be justly deprived without their consent. This right would be infringed if the claims to an apanage should lose the nature of a legal right, and should be transferred to the civil list in such a form that the payment of the allowance should depend on the pleasure of the head of the state for the time. But when there has been no change of fideicommissal property belonging to the reigning family into state property, the mere possession of political power by a particular family gives no right to those members of the reigning family who have no share in the government to claim an independent allowance from the income of the state; for the old confusion between the relations of a reigning family to the state and the private relations of the same family, by virtue of which confusion the state was considered the patrimonial property of a family, is altogether unknown at the present day. In states where there has been no change of family property into state property, the reigning prince may be properly enough left to provide for all the members of his family out of the means supplied him by the civil list. There may

however be political reasons for making certain allowances to the members of the reigning family, independent of the civil list that is granted to the ruling prince. But as in modern times neither the honour of a nation nor the dignity of the members of a reigning family depends in any degree on the amount of the expenditure which such members make out of the public treasury, so there are no reasons whatever for making them any independent allowance, except reasons of general interest. Accordingly in what are commonly called constitutional monarchies, where the princes of the royal family are called to any active participation in the offices of state, the allowance of a suitable income out of the public treasury may serve to give them a more independent position with respect to the head of the state. Such an allowance may also serve in the case of princes who stand in the line of succession, to give to those who may be the future heads of the state the respect due to their station, and to secure them a suitable and certain income, and thus to draw more closely the ties which unite them and the people. (Rotteck and Welcker, *Staats-Lexicon*, art. by P. A. Pfizer.) [CIVIL LIST.]

APOTHECARIES, COMPANY OF, one of the incorporated Companies of the city of London.

The word Apothecary is from the French *apotecaire*, which is defined by Richelet to be "one who prepares medicines according to a physician's prescription." The word is from the low Latin *Apothecarius*, and that is from the genuine Latin *apotheca*, which means a storehouse or store-room generally, and, more particularly, a place for storing wine in: the Latin word is, however, from the Greek (*ἀποθήκη*).

In England, in former times, an apothecary appears to have been the common name for a general practitioner of medicine, a part of whose business it was, probably in all cases, to keep a shop for the sale of medicines. In 1345 a person of the name of Coursus de Gangeland, on whom Edward III. then settled a pension of sixpence a day for life, for his attendance on his Majesty some time

before while he lay sick in Scotland, is called in the grant, printed in Rymer's '*Fœdera*,' an apothecary of London. But at this date, and for a long time after, the profession of physick was entirely unregulated.

It was not till after the accession of Henry VIII. that the different branches of the profession came to be distinguished, and that each had its province and particular privileges assigned to it by law.

In 1511 an act of parliament (3 Hen. VIII. c. 11) was passed, by which, in consideration, as it is stated, of "the great inconvenience which did ensue by ignorant persons practising physick or surgery, to the grievous hurt, damage, and destruction of many of the king's liege people," it was ordered that no one should practise as surgeon or physician in the city of London, or within seven miles of it, until he had been first examined, approved, and admitted by the Bishop of London or the Dean of St. Paul's, who were to call in to assist them in the examination "four doctors of physick, and of surgery other expert persons in that faculty." In 1518 the physicians were for the first time incorporated, and their college founded, evidently with the view that it should exercise a general superintendence over all the branches of the profession. In 1540 the surgeons were also incorporated and united, as they continued to be till the beginning of the present century, with the barbers.

The two associations thus established appear, however, to have very soon begun to overstep their authority. It was found necessary, in 1543, to pass an act for the toleration and protection of the numerous irregular practitioners, who did not belong to either body, but who probably formed the ordinary professors of healing throughout the kingdom. In this curious statute (34 & 35 Hen. VIII. c. 8) the former act of 1511 is declared to have been passed, "amongst other things, for the avoiding of sorceries, witchcraft, and other inconveniences;" and not a little censure is directed against the licensed and associated surgeons for the mercenary spirit in which they are alleged to have acted; while much praise is bestowed upon the unincorporated practitioners for

their charity in giving the poor the benefit of their skill and care, and for the great public usefulness of their labours generally. The import of the enactment is expressed in its title, which is, "An Act that persons being no common surgeons may minister outward medicines." The persons thus tolerated in the administration of outward medicines, of course comprehended those who kept shops for the sale of drugs, to whom the name of apothecaries was now exclusively applied. The acceptance of the name, as thus confined, may be gathered from Shakspeare's delineation of the apothecary in 'Romeo and Juliet' (published in 1597), as one whose business was "culling of simples," who kept a "shop," the "shelves" of which were filled with "green earthen pots," &c., and who was resorted to as a dealer in all sorts of chemical preparations. Nothing is said of his practising medicine; and it certainly was not till nearly a century later that apothecaries in England, as distinguished from physicians and surgeons, began regularly to act as general practitioners.

Meanwhile, however, the apothecaries of London were incorporated by James I. on the 9th of April, 1606, and united with the Company of Grocers. They remained thus united till the 6th of December, 1617, when they received a new charter, by which they were formed into a separate company, under the designation of the "Master, Wardens, and Society of the Art and Mystery of Apothecaries of the city of London." This charter ordains that no grocer shall keep an apothecary's shop; that every apothecary shall have served an apprenticeship of seven years; and before he is permitted to keep a shop, or to act as an apothecary, he shall be examined before the master and wardens to ascertain his fitness. It also gave the Company extensive powers to search for and destroy in the city of London, or within seven miles, compounds and drugs which were adulterated or unfit for medical use. This is the charter which still constitutes them one of the city companies, although various subsequent acts of parliament have materially changed the character of the society.

It appears to have been only a few years before the close of the seventeenth century that the apothecaries, at least in London and its neighbourhood, began gradually to prescribe, as well as to dispense medicines. This encroachment was strongly resisted by the College of Physicians, who, by way of retaliation, established a dispensary for the sale of medicines to the poor at prime cost at their hall in Warwick Lane. A paper controversy rose out of this measure; but the numerous tracts which were issued on both sides are now all forgotten, with the exception of Garth's burlesque epic poem, entitled 'The Dispensary,' first published in 1697. The apothecaries, however, may be considered as having made good the position they had taken, although for a considerable time their pretensions continued to be looked upon as of a somewhat equivocal character. Addison, in the 'Spectator,' No. 195, published in 1711, speaks of the apothecaries as the common medical attendants of the sick, and as performing the functions both of physician and surgeon. After mentioning blistering, cupping, bleeding, and the inward applications employed as expedients to make luxury consistent with health, he says, "The apothecary is perpetually employed in countermining the cook and the vintner." On the other hand, Pope, in his 'Essay on Criticism,' published the same year, has the following lines in illustration of the domination which he asserts to have been usurped by the critic over the poet:—

"So modern 'pothecaries, taught the art  
By doctors' bills to play the doctor's part,  
Bold in the practice of mistaken rules,  
Prescribe, apply, and call their masters fools."

Nor, indeed, did the apothecaries themselves contend at this time for permission to practise as medical advisers and attendants any further than circumstances seemed to render it indispensable. In a clever tract written in their defence, published in 1724, and apparently the production of one of themselves, entitled 'Pharmacopolæ Justificati; or, the Apothecaries vindicated from the Imputation of Ignorance, wherein is shown that a2 Academical Education is nowise necessary to qualify a Man for the practice of

Physic,' we find the following opinion expressed (p. 31):—"As to apothecaries practising, the miserable state of the sick poor, till some other provision is made for their relief, seems sufficiently to warrant it, so long as it is confined to them." We may here observe, that the custom of persons being licensed by the bishops to practise medicine within their dioceses continued to subsist at least to about the middle of the last century. It is exclaimed against as a great abuse in a tract entitled 'An Address to the College of Physicians,' published in 1747.

It has been often stated that the dealers in medicines called chemists or druggists first made their appearance about the end of the last century. As they soon began to prescribe, as well as to dispense, the rivalry with which they were thus met was as eagerly opposed by the regular apothecaries as their own encroachments had in the first instance been by the physicians. In certain resolutions passed by a meeting of members of the Associated Apothecaries, on the 20th of November, 1812, among other causes which are asserted to have of late years contributed to degrade the profession, is mentioned the intrusion of pretenders of every description:—"Even druggists," it is said, "and their hired assistants, visit and administer to the sick; their shops are accommodated with what are denominated private surgeries; and, as an additional proof of their presumption, instances are recorded of their giving evidence on questions of forensic medicine of the highest and most serious import!" But in all this the druggists did no more than the apothecaries themselves had begun to do a hundred years before. We doubt, too, if the first appearance of these interlopers was so recent as has been assumed. In a tract, printed on a single folio leaf "at the Star in Bow Lane in 1683," entitled 'A Plea for the Chemists or Non-Collegiats,' the author, Nat Merry, stoutly defends the right of himself and the other manufacturers of chemical preparations to administer medicines, against the objections of the members of the Apothecaries' Company, who seem to have been themselves at this time only beginning to act as general

practitioners. And in 1708 we find a series of resolutions published by the Court of Apothecaries, in which they complain of the intrusion into their business of foreigners—that is, of persons not free of the company. Their charter, though it appeared to bestow upon them somewhat extensive privileges, had been found nearly inoperative from the omission of any means of executing its provisions, and of any penalties for their infringement. In 1722, therefore, an act of parliament was obtained by the company, giving them the right of visiting all shops in which medicinal preparations were sold in London, or within seven miles of it, and of destroying such drugs as they might find unfit for use. This act expired in 1729; and although an attempt was made to obtain a renewal of it, the application was not persevered in. But in 1748 another act was passed, empowering the society to appoint ten of their members to form a court of examiners, without whose licence no one should be allowed to sell medicines in London, or within seven miles of it. It was stated before a Committee of the House of Commons, that there were at this time about 700 persons who kept apothecaries' shops in London, not one-half of whom were free of the company. This act probably had the effect of putting the unlicensed dealers down; which may account for the common statement that no such description of dealers ever made their appearance till a comparatively recent period. In an Introductory Essay prefixed to the first volume of the 'Transactions of the Associated Apothecaries and Surgeon Apothecaries of England and Wales' (8vo. London, 1823), in which it is admitted that anciently "the apothecary held the same situation which appertains, or ought to appertain, to the present druggist, who arose," it is affirmed, "about thirty years ago," the following remark is added:—"For some time previous to that period, indeed, certain apothecaries existed who purely kept shop, without prescribing for diseases; but very few of these existed even in London; for in the memory of a physician lately dead, there were not more, as he stated, than about half a dozen persons



in London who kept what could be called a druggist's shop."

Up to within the last few years the Company of Apothecaries had never attempted to extend their authority beyond the metropolis and its immediate neighbourhood. But in 1815 an act was passed (55 Geo. III. c. 194) which placed the society in a new position, by giving to a Court of Examiners, composed of twelve members, who must be apothecaries, the sole right of examining and licensing apothecaries throughout England and Wales. The examiners must be apothecaries who have been in practice for not less than ten years. They are appointed by the master, wardens, and assistants of the company. The master and wardens, or the Court of Examiners, may appoint five apothecaries in any county in England above thirty miles from London, who are empowered to examine and license apothecaries' assistants. The power of searching for adulterated drugs given by the charter was repealed by the above act, and in lieu thereof the master, wardens, or assistants, or the examiners, or any two of them, are empowered to enter the shops of apothecaries in any part of England and Wales, and to search, survey, and prove medicines, and to destroy the same; and also to impose fines on the offenders, of 5*l.*, 10*l.*, and 15*l.* for the first, second, and third offences, half of which goes to the informers and half to the Company. From twelve to twenty members are employed annually, in parties of two each, in suitable divisions, to conduct the searches. They sometimes destroy drugs and medicines in pursuance of their powers; but it is more usual to direct the clerk to send letters to each defaulter, directing them to supply themselves with drugs of good quality. The pecuniary advantages which the company derive from this act are not large enough to allow them to carry on the searches on a very extensive scale. The act also empowers the Society of Apothecaries to prosecute persons who unlawfully exercise the functions of an apothecary. It is a subject of complaint with the Society that the machinery for accomplishing this object is very imperfect. The punishment

for the offence is a penalty recoverable only by action of debt, which must be tried at the assizes for the county in which the offence is committed. As it is of importance that prosecutions instituted by a public body should not fail, the Society are not in the habit of instituting frequent prosecutions. In only one case have they failed. The expenses of prosecutions are very great, six recent actions having cost 320*l.* each. (*Statement, &c.*, May, 1844.) From the small number of prosecutions, owing to the want of a more summary process, it is stated that "the number of unqualified persons who are engaged in practice is very considerable." The act of 1815 provided that, after the 1st of August in that year, no person not licensed should practise as an apothecary, except such only as were already in practice. It is required by the act that candidates for examination should have attained the age of twenty-one, and have served an apprenticeship of at least five years with an apothecary legally qualified to practice; and they are also required to produce testimonials of good moral conduct, and of a sufficient medical education.

The history of the steps taken to procure this act is very minutely detailed in the Essay prefixed to the 'Transactions of the Associated Apothecaries and Surgeons,' already referred to. They did not seek for such extensive powers as the act of 1815 subsequently gave; for in a report dated 5th December, 1812, the committee of management express themselves as of opinion "that the management of the sick should be as much as possible under the superintendence of the physician." The examining body proposed by the associated apothecaries was to consist of members of the three branches of the profession; but the Colleges of Physicians and Surgeons, and the Apothecaries' Company themselves, having joined in opposing the bill, it was withdrawn after its first reading. The next bill was promoted by the Apothecaries' Company, on the College of Physicians intimating that they would not oppose a measure for the regulation of the practice of apothecaries, by which the Society of Apothecaries should be appointed the examining body. This bill received the royal assent. Du-

ring its progress, the opposition of the chemists and druggists rendered it necessary to introduce a clause which exempted that class of dealers altogether from its operation.

From the circumstance that in country places, with very few exceptions, no person can practise medicine without keeping a supply of drugs for the use of his patients, or in other words, acting as an apothecary, this statute has given to the Society of Apothecaries control over the medical profession throughout England. Every general practitioner must not only have obtained his certificate, but must have served an apprenticeship of five years with a licentiate of the Company. The payment required by the Act of Parliament for a licence to practise in London, or within ten miles of it, is ten guineas; in any other part of the country, six guineas; and the licence to practise as an assistant is two guineas. The penalty for practising without this licence is twenty pounds. It is declared in the act that the society may appropriate the moneys which they thus receive in any way they may deem expedient.

It appears that from the 1st August, 1815, when the new act came into operation, to the 31st January, 1844, 10,033 practitioners have been licensed by the Court of Examiners. Dividing the twenty-seven years from August, 1816, to August, 1843, into three periods of nine years each, the annual average number of persons examined, rejected, and passed, is as follows:—

	Examined.	Rejected.	Passed.
1816-25	308·6	20·0	288·6
1825-34	453·1	68·3	384·7
1834-43	485·8	70·2	408·8

That the examination is not a mere matter of form is shown by the number of pupils rejected, which in the first period of nine years was 1 in about 15; in the second, above 1 in 6·6; and in the nine years ending August, 1843, one in 6·2. The rejected candidates no doubt frequently obtain their diplomas at a subsequent examination, after preparing themselves better; but the fact of so many being rejected is creditable to the Court of Examiners. No fees are paid by the rejected candidates.

From a return printed by order of the House of Commons in 1834, it appears that from the 29th March, 1825, to the 19th June, 1833, the money received by the company for certificates was 22,822*l.* 16*s.* Of this, in the course of the eight years, 10,218*l.* 12*s.* had been paid to the members of the Court of Examiners, besides 980*l.* to their secretary.

Before the act of 1815 came into operation, a large proportion of the medical practitioners in country places in England were graduates of the Universities of Edinburgh, Glasgow, and Dublin, or licentiates of the Royal Colleges of Surgeons of these cities, or of that of London; but the state of medical education generally was at that period very defective. The London College of Surgeons required no medical examination whatever, and twelve months only of surgical study. Persons thus qualified are admitted as surgeons in the army and navy, and into the service of the East India Company, after an additional examination by their respective boards; but they are not allowed to act as apothecaries in England.

Except in regard to experience in the compounding of medicines, it is not denied that, twelve or fourteen years ago, the course of education prescribed by the Company's Court of Examiners was very defective. In their regulations, dated August, 1832, referring to the improved system which had been recently introduced, they say, "The medical education of the apothecary was heretofore conducted in the most desultory manner; no systematic course of study was enjoined by authority or established by usage; some subjects were attended to superficially, and others of great importance were neglected altogether." In fact, all the attendance upon lectures and hospital practice that was demanded might have been and often was gone through in six or at most in eight months. The court at that time admitted that still "the attendance upon lectures, but more especially upon the hospital practice, is often grossly eluded or neglected." The case is now greatly altered. The following abstract of the principal

regulations issued by the Court of Examiners from 1815 to the present time, show that the strictness as to the attendance on and number of lectures and hospital practice has been gradually increased.

The instructions issued by the Court of Examiners, dated 31st July, 1815 (the day previous to the new act coming into operation), require evidence from candidates for the licence of the Company of having served an apprenticeship of five years, also testimonials of good moral character and of having attained the age of twenty-one years. The course of lectures prescribed were:—One course of lectures on chemistry, one on materia medica, two on anatomy and physiology, two on the theory and practice of medicine; six months' attendance on the medical practice of an hospital, infirmary, or dispensary. The examination consisted:—1. In translating parts of the 'Pharmacopœia Londinensis' and physicians' prescriptions. 2. In the theory and practice of medicine. 3. In pharmaceutical chemistry. 4. In the materia medica.

In September, 1827, the Court of Examiners prescribed an addition to the above course; an extra course of lectures on chemistry, and the introduction of botany in the course on materia medica.

In September, 1828, the Court increased the number of lectures both in chemistry, and materia medica with botany, to two courses on each subject. The period of attendance on the physician's practice at an hospital was increased to nine months, and at a dispensary to twelve months; and two new courses of lectures were instituted,—on midwifery and the diseases of women and children.

In October, 1830, the Court directed that candidates should produce a certificate of having devoted at least two years to an attendance on lectures and hospital practice; besides which they must have attended for twelve months, at least, the physician's practice at an hospital containing not less than sixty beds, and where a course of clinical lectures is given; or for fifteen months at a dispensary connected with some medical

school recognised by the Court. The following changes and additions in the courses of lectures were also made:—One course was instituted on forensic medicine; one distinct course on botany; and therapeutics was included in the two courses on materia medica. Students were earnestly recommended to avail themselves of instruction in morbid anatomy.

In April, 1835, the Court of Examiners issued new regulations (which are those now in use) for raising still higher the qualifications of candidates for the licence of the Company. Every candidate whose attendance on lectures commenced on or after the 1st of October, 1835, must have attended the following lectures and medical practice during not less than three winter and two summer sessions: each winter session to consist of not less than six months, and to commence not sooner than the 1st nor later than the 15th October; and each summer session to extend from the 1st of May to the 31st of July.

*First Winter Session.*—Chemistry. Anatomy and physiology. Anatomical demonstrations. Materia medica and therapeutics; this course may be divided into two parts of fifty lectures each, one of which may be attended in the summer.

*First Summer Session.*—Botany and vegetable physiology; either before or after the first winter session.

*Second Winter Session.*—Anatomy and physiology. Anatomical demonstrations. Dissections. Principles and practice of medicine.

*Second Summer Session.*—Forensic medicine.

*Third Winter Session.*—Dissections. Principles and practice of medicine.

Midwifery, and the diseases of women and children, two courses, in separate sessions, and subsequent to the termination of the first winter session. Practical midwifery, at any time after the conclusion of the first course of midwifery lectures. Medical practice during the full term of eighteen months, from or after the commencement of the second winter session; twelve months at a recognised hospital, and six months at a recognised hospital or a recognised dis-

pensary: in connection with the hospital attendance, a course of clinical lectures, and instruction in morbid anatomy, will be required.

The sessional course of instruction in each subject of study is to consist of not less than the following number of lectures:—One hundred on chemistry; one hundred on materia medica and therapeutics; one hundred on the principles and practice of medicine; sixty on midwifery, and the diseases of women and children; fifty on botany and vegetable physiology. Every examination of an hour's duration will be deemed equivalent to a lecture. The lectures required in each course must be given on separate days. The lectures on anatomy and physiology, and the anatomical demonstrations, must be in conformity with the regulations of the Royal College of Surgeons of London in every respect. Candidates must also bring testimonials of instruction in practical chemistry, and of having dissected the whole of the human body once at least.

The above course of study may be extended over a longer period than three winter and two summer sessions, provided the lectures and medical practice are attended in the prescribed order and in the required sessions. The examinations of the candidate for the certificate are as follows:—In translating portions of the first four books of Celsus '*De Medicinâ*' and of the first twenty-three chapters of Gregory's '*Conspectus Medicinæ Theoreticæ*,' in physicians' prescriptions, and the '*Pharmacopœia Londinensis*,' in chemistry; in materia medica and therapeutics; in botany; in anatomy and physiology; in the principles and practice of medicine. This branch of the examination embraces an inquiry into the pregnant and puerperal states; and also into the diseases of children.

In the 'Statement' issued by the Society of Apothecaries in May, 1844, they say: "Had the means of instruction remained as they were in 1815, the Court of Examiners could not have ventured upon extending their regulations as they have done. In this instance, however, as in others, the demand produced the supply. The increased number of medical stu-

dents attending lectures in conformity with the Regulations led to the increase of medical teachers, and not only did new schools spring up in the metropolis, but, under the auspices of the Court of Examiners, public schools of medicine were organized in the provinces: and at the present day Manchester, Liverpool, Birmingham, Leeds, Bristol, Hull, Sheffield, Newcastle, and York, have each their public school, at which the student may pursue and *complete* his medical education." It is added that "no mean proportion of those whose examination has given evidence of the highest professional attainment have been pupils of the provincial schools." The influence of the Regulations of the Court of Examiners on the medical profession is very great. The number of students who registered at Apothecaries' Hall at the commencement of the winter session of 1843-4, as having entered to lectures at the metropolitan schools alone, in conformity with these Regulations, was 1031. The opinion of very eminent members of the medical profession before a select committee of the House of Commons in 1834, as to the manner in which the Apothecaries' Company had performed the duties devolving upon them as an examining body, are very decided. Sir Henry Hallford stated that "the character of that branch of the profession had been amazingly raised since they have had that authority;" Dr. Seymour, that "there is no question that the education of the general practitioner is of the very highest kind, as good as that of physicians some years ago;" Sir David Barry, that "the examination established by the Company of Apothecaries was by far the most comprehensive examination in London."

In November, 1830, the Court issued very strict rules respecting the registration of lectures and hospital or dispensary attendance.

The Apothecaries' Society, in their interpretation of the clause which requires five years' apprenticeship to an apothecary, have considered that "every candidate who has been an apprentice for the length of time directed by the act, is entitled to be examined, provided the person

to whom he was an apprentice was legally qualified to practise as an apothecary according to the laws in force in that kingdom or particular district in which he resided; and in accordance with this interpretation, hundreds of candidates have been admitted to examination who have served their apprenticeships in Scotland and Ireland, as well as many from America and the British Colonies." (*Reply, &c.* p. 3.) Of twenty-four graduates and licentiates of the Scottish colleges who presented themselves for examination before the Society of Apothecaries during the twelve months ending the 25th of April, 1833, eight candidates, or one-third of the whole number, were rejected. (*Reply, &c.*) The whole subject of medical education in these kingdoms requires a complete and impartial investigation; and that the apprentice clause in particular demands a fresh consideration, is now a pretty general opinion. The admission of graduates from Scotland and Ireland to an equal participation of practice with the English general practitioner, can only be regarded as a very partial measure of reform, if reform should be found necessary; and the interests of the public require that, if others than those licensed by the Apothecaries' Society are admitted to general practice in England, there shall at least be good proof that they are as well qualified as those who obtain the apothecaries' diploma. One plan of medical reform to which attention has been recently directed is to form what are now termed the three branches of the profession into one Faculty of Medicine, with the power of electing their own council; but it is contended that the physicians and surgeons having interests adverse to those of the apothecaries, such a plan would not be fair. It is also proposed that chemists and druggists should be duly registered after an examination respecting their fitness.

The Apothecaries' Company ranks the fifty-eighth in the list of city Companies. The freedom of the Company is acquired by patrimony, freedom, and redemption. Freedom by patrimony may be acquired by persons not apothecaries. The charter requires that all persons practising as apothecaries in the city of London should

belong to the Company; but this rule is not enforced. Apprentices to apothecaries must be bound at the Company's Hall, after an examination by the Master and Wardens as to their proficiency in Latin. The members of the society are exempted by statute from serving ward and parish offices. The income of the Company is under 2000*l.* a year. Their arms are, azure, Apollo in his glory, holding in his left hand a bow, in his right an arrow, bestriding the serpent Python; supporters, two unicorns; crest, a rhinoceros, all or; motto, *Opiferaque per orbem dicor*. They have a hall, with very extensive laboratories, warehouses, &c., in Water-lane, Blackfriars, where medicines are sold to the public; and where, since the reign of Queen Anne, all the medicines are prepared that are used in the army and navy. The freemen of the Company who are what is termed proprietors of stock, have the privilege of becoming participators in the profits arising from the sale of medicines. The concern is regulated by a committee of thirty members. The dispensary was established in 1623; and the laboratories by subscription among the members of the Company in 1671. The Company also possess a garden, to which every medical student in London is admitted, of above three acres in extent, at Chelsea, in which exotic plants are cultivated. The ground was originally devised to them, in 1673, for sixty-one years at a rent of five pounds, by Charles Cheyne, Esq., lord of the manor of Chelsea, and afterwards granted to them in perpetuity, in 1721, by his successor, Sir Hans Sloane, on condition that they should annually present to the Royal Society, at one of their public meetings, fifty specimens or samples of different sorts of plants, well-cured and of the growth of the garden, till the number should amount to two thousand. This they have long since done, and the specimens are preserved by the Royal Society. The gardens are kept up at a considerable expense out of the funds of the Company, assisted at various times by liberal contributions of the members. Connected with the garden is the office of Botanical Demonstrator, who is appointed by the Court.

He gives gratuitous lectures at the garden twice a week from May to September, to the apprentices of freemen of the Company, and to the pupils of all botanical teachers who apply for admission at the garden. The society gives every year a gold and a silver medal and books as prizes to the best-informed students in materia medica who have attended their garden. The apprentices of members of the society are not permitted to contend with other candidates for these prizes.

**APPARENT HEIR**, in the law of Scotland, is a person who has succeeded by hereditary descent to land or other heritable property, but who has not obtained feudal investiture. An apparent heir may act as absolute proprietor in almost every other capacity but that of removing tenants who have got possession from his predecessor.

**APPARITOR**, an officer employed as messenger and in other duties in ecclesiastical courts. The canons direct that letters citatory are not to be sent by those who have obtained them, nor by their messenger, but the judge shall send them by his own faithful messenger. It is the duty of the apparitor to call defendants into court, and to execute such commands as the judge may give him; and this duty shall not be performed by deputy. In 21 Hen. VIII. c. 5, as well as in the canons, apparitors are also called summoners or summers. This act was passed for the purpose of restraining the number of apparitors kept by bishops, archdeacons, or their vicars or officials, or other inferior ordinaries.

**APPEAL**. This word is derived immediately from the French Appel or Apel, which is from the Latin Appellatio. The word Appellatio, and the corresponding verb Appellare, had various juridical significations among the Romans. It was used to signify a person's applying to the tribunes for their protection; and also generally to signify the calling or bringing of a person into court to answer for any matter or offence. Under the Empire, Appellatio was the term used to express an application from the decision of an inferior to a superior judge on some sufficient ground. The first title of the 49th book of the Digest is on Appeals

(De Appellationibus). In the French language, the word apellant signifies he who appeals, he who makes an appel from the decree or sentence of an inferior judge, and both words have the same sense in the English. Appel also signifies a challenge to single combat.

The French word Appeller is explained as signifying the act of summoning the party against whom complaint is made. There is also the phrase to "appeal from one to another," which is the English expression. The Latin word Appellare is used both to express the summoning or calling on a person against whom a complaint or demand is made, and the calling on, or applying to, the person whose protection is sought (Appius tribunos appellavit: Livy, iii. 56). In the Roman law-writers the common phrase is "appellare ad," from which is borrowed the modern expression "to appeal to;" and the appellant is said "appellare adversus, contra, aliquem or sententiam præsidis," or "appellare a, ex, de sententia," which phrases resemble those in use among us. (Facciolati, Lex. Appello; Richelet, Dictionnaire de la Langue Française.)

**APPEAL**, in the old Criminal Law of England, was a vindictive action at the suit of the party injured, in which suit the appellant, instead of merely seeking pecuniary compensation, as in civil actions, demanded the punishment of the criminal.

It differed from an indictment in some material points. Being a proceeding instituted by a private person in respect of a wrong done to himself, the prerogative of the crown did not go so far as to suspend the prosecution or to defeat it by a pardon. It seems to have been in reference to this peculiarity that the appeal is said to have been called by Chief Justice Holt "a noble birthright of the subject," inasmuch as it was the only mode by which the subject could insist upon the rigorous execution of justice without the risk of royal interposition on behalf of the offending party. Even a previous acquittal on an indictment for the same offence was no bar to the prosecution by the appellant; nor was a previous conviction a bar, where the execution of the sentence

had been prevented by a pardon. It was in the power of the appellant alone to relinquish the prosecution, either by releasing his right of appeal or by accepting a compromise.

Another remarkable feature of appeal was the mode of trial, which in cases of treason or capital felony was either by jury or by *battle*, at the election of the defendant.

Where the latter form of trial was adopted, the following was the order of proceeding:—The appellant formally charged the *appellee* with the offence: the latter denied his guilt, threw down his glove, and declared himself ready to prove his innocence by a personal combat. The challenge was accepted by the appellant, unless he had some matter to allege, in what was termed a *counterplea*, showing that the defendant was not entitled to the privilege of battle, and both parties were then put to their oaths, in which the guilt of the accused was solemnly asserted on one side and denied on the other. A day was then appointed by the court for the combat, the defendant was taken into custody, and the accuser was required to give security to appear at the time and place prefixed. On the day of battle, the parties met in the presence of the judges, armed with certain prescribed weapons, and each took a preliminary oath to the effect that he had resorted to no unfair means for securing the assistance of the devil in the approaching contest. If the defendant was vanquished, sentence was passed upon him, and he was forthwith hanged. But if he was victorious, or was able to persist in the combat till starlight, or if the appellant voluntarily yielded, and cried *craven*, then the defendant was acquitted of the charge, and the appellant was not only compelled to pay damages to the accused, but was further subjected to heavy civil penalties and disabilities.

Some of the details of this singular mode of trial, as reported by contemporary writers, are sufficiently ludicrous. Thus we are told that the combatants were allowed to be attended within the lists by *counsel*, and a *surgeon with his ointments*. In the reign of Charles I., Lord Rea, on a similar occasion, was in-

dulged with a seat and wine for refreshment, and was further permitted to avail himself of such valuable auxiliaries as *nails, hammers, files, scissors, bodkin, needle and thread*. (Rushworth's *Collections*, cited in Barrington's *Observations*, p. 328.) We also learn from the *Close Rolls* recently published, that parties under confinement preparatory to the trial were allowed to go out of custody for the purpose of practising or taking lessons in fencing. (Mr. Hardy's *Introduction*, p. 185.) The whimsical combat between Horner and Peter, in the second part of *Henry VI.*, has made the proceedings on an appeal familiar to the readers of Shakspeare; and the scene of a judicial duel upon a criminal accusation has been still more recently presented to us in the beautiful fictions of Sir Walter Scott.

It appears probable that the trial by battle was introduced into England from Normandy. The *Grand Coutumier* of that country, and the *Assizes of Jerusalem*, furnish evidence of its early existence.

The courts in which it was admitted were the King's Bench, the Court of Chivalry, and (in the earlier periods of our history) the High Court of Parliament.

In some cases the appellant was able to deprive the accused of his choice of trial, and to submit the inquiry to a jury. Thus, if the appellant was a female; or under age; or above the age of sixty; or in holy orders; or was a peer of the realm; or was expressly privileged from the trial by battle by some charter of the king; or laboured under some material personal defect, as loss of sight or limb; in all such cases he or she was allowed to state in a counterplea the ground of exemption, and to refer the charge to the ordinary tribunal. The party accused was also disqualified from insisting on his *wager of battle*, where he had been detected in the very act of committing the offence, or under circumstances which precluded all question of his guilt. Indeed (if early authorities are to be trusted) it is far from clear that a criminal, apprehended in *flagranti delicto*, did not undergo the penalties of the law forthwith, without the formality of any

trial. (Palgrave's *English Commonwealth*, vol. i. p. 210.) The law on this latter point formed the subject of discussion in the Court of King's Bench in the year 1818, in the case of *Ashford v. Thornton*. Upon that occasion the defendant had been acquitted upon a prior indictment for the murder of a female, whom he was supposed to have previously violated. The acquittal of the accused upon evidence which to many appeared sufficient to establish his guilt occasioned great dissatisfaction, and the brother and next heir of the deceased was accordingly advised to bring the matter again under the consideration of a jury by the disused process of an appeal. The defendant waged his battle in the manner above described, and the appellant replied circumstances of such strong and pregnant suspicion as (it was contended) precluded the defendant from asserting his innocence by battle. It was, however, decided by the court that an appeal, being in its origin and nature a hostile challenge, gave to the appellee a right to insist upon fighting, and that the appellant could not deprive him of that right by a mere allegation of suspicious circumstances. The case was settled by the voluntary abandonment of the prosecution. In the following year an act (59 Geo. III. c. 46) was passed to abolish all criminal appeals and trial by battle in all cases, both civil and criminal.

The cases in which, by the ancient law, appeals were permitted, were treason, capital felony, mayhem, and larceny. Indeed, the earliest records of our law contain proofs that appeals were a common mode of proceeding in many ordinary breaches of the peace, which at this day are the subject of an action of trespass. The wife could prosecute an appeal for the murder of her husband; the heir male general for the murder of his ancestor; and in any case the prosecutor might lawfully compromise the suit by accepting a pecuniary satisfaction from the accused. Hence it was that the proceeding was in fact frequently resorted to for the purpose of obtaining such compensation rather than for the ostensible object of ensuring the execution of justice on the offender (Hawkins's *Crown*

*Law*, book ii. chaps. 23 and 45; *Ashford v. Thornton*, Barnwall and Alderson's *Reports*, vol. i.; Kendal's *Argument for Construing largely*, &c.; Bigby v. Kennedy, Sir William Blackstone's *Reports*, vol. ii. p. 714; and the ingenious speculations and remarks of Sir F. Palgrave on the origin of trial by battle, in his work on the Commonwealth of England.)

Besides the appeal by innocent or injured parties, a similar proceeding was in certain cases instituted at the suit of an accomplice. The circumstances under which this might be done are mentioned under the article APPROVER.

**APPEAL.** The removal of a Civil cause from an inferior court or judge to a superior one, for the purpose of examining the validity of the judgment given by such inferior court or judge, is called an Appeal.

An appeal from the decision of a court of common law is usually prosecuted by suing out a *writ of error*, by means of which the judgment of the court below undergoes discussion, and is either affirmed or reversed in the court of error.

The term appeal, used in the above sense, is by the law of England applied in strictness chiefly to certain proceedings in Parliament, in the Privy Council and Judicial Committee of the Privy Council, in the Courts of Equity, in the Admiralty and Ecclesiastical courts, and in the Court of Quarter Sessions.

Thus an appeal lies to the House of Lords from the decrees or orders of the Court of Chancery in this country and in Ireland, and from the decisions of the supreme civil courts in Scotland.

An appeal lies to the king in council from the decrees and decisions of the colonial courts, and indeed from all judicatures within the dominions of the crown, except Great Britain and Ireland.

To the same jurisdiction are referred (in the last resort) all ecclesiastical and admiralty causes, and all matters of lunacy and idiocy.

In 1844 an act was passed correcting an anomaly in the former state of the law under which appeals could not be brought before the Privy Council for the reversal, &c. of judgments, of any courts



in certain colonies, save only of the Courts of Error or Courts of Appeal within the same. The act provides for the admission of appeals from other courts of justice within such colonies.

A decree or order of the Master of the Rolls or the Vice-Chancellors may be revised by the Lord Chancellor upon a petition of appeal.

The number of causes or petitions heard on appeal before the Lord Chancellor from Trinity Term, 1842, to Hilary Term, 1844, both inclusive, was 133, in all of which, with the exception of 15, judgment had been given at the end of Hilary Term, 1844.

An appeal lies directly from the Vice-Admiralty courts of the colonies, and from other inferior admiralty courts, as well as from the High Court of Admiralty, to the king in council. This latter appellate jurisdiction was regulated by statutes 2 & 3 Will. IV. c. 92, and 3 & 4 Will. IV. c. 41, by which the Court of Delegates, Commission of Review, and Commission of Appeal in Prize Causes, have been abolished.

To the judicial committee of Privy Council (3 & 4 Will. IV. c. 41) are referred all appeals from the courts of the Isle of Man and the Channel Islands, the Colonial and Indian courts, all appeals to the Queen in Council, matters relating to the rights of patentees, &c., &c. [PRIVY COUNCIL.]

The number of causes or petitions heard on appeal before her Majesty's Privy Council, from January 1, 1842, to February 20, 1844, was 92, and judgment had been delivered in all except three.

In the ecclesiastical courts, a series of appeals is provided from the Archdeacon's Court to that of the bishop, and from the bishop to the archbishop. From the archbishop the appeal of right lay to the king in council before the Reformation; yet appeals to the Pope, or appeals to Rome, as they were called, were in fact of common occurrence until the reign of Henry VIII., by whom an appeal was directed to be made to certain delegates named by himself, and appeals to Rome were abolished (24 Hen. VIII. c. 12). After that period a Court of

Delegates, appointed for each cause, was the ordinary appellate tribunal, until the abolition of their jurisdiction by the act alluded to above, by which it is further provided that no Commission of Review shall hereafter issue, but that the decision of the king in council shall be final and conclusive.

Such are the principal heads of appeal, to which we may add the appellate jurisdiction of the justices of the peace assembled at the Quarter Sessions, to whom various statutes have given authority to hear upon appeal the complaints of persons alleging themselves to be aggrieved by the orders or acts of individual magistrates.

Under recent acts of parliament the right of appeal is given in a number of cases relating to ecclesiastical discipline. There is an appeal given to the clergy from the bishop to the archbishop in certain cases, which must be presented in one month after the bishop's decision. (1 & 2 Vict. c. 106.) By § 83 of the same act, it is provided that in case of difference between an incumbent and curate as to stipend, the case may be brought before the bishop and summarily determined, and the incumbent's living may be sequestered if he refuses payment according to the bishop's decision. § 111 points out the mode of making appeals under this act. Appeals on matters of ecclesiastical discipline are still further provided for by §§ 13, 15, and 16 of 3 & 4 Vict. c. 86.

In the session of 1844 (May 30) a bill was brought into the House of Commons by Mr. Kelly, to provide an Appeal in Criminal cases, and thus to give the same privileges which property enjoys, but which are denied in matters affecting life and liberty. At present, in criminal cases, the judge may, if he think proper, reserve a point for consideration. If the case be considered by the judges, the reasons for affirming the sentence, or for recommending a pardon, are not publicly delivered. In every criminal case recourse may at present be had to the Secretary of State; but as a matter of course he would refer to the judge, and unless the judge is favourable, there is very little chance that the Secretary of State would

grant relief. In the bill brought in by Mr. Kelly it is intended to assimilate criminal as much as possible to civil procedure as to appeal. It is left open to the party convicted to move in any of the superior courts for a rule to show cause why there should not be a new trial, upon which motion the court is to be at liberty to deal with the matter as in a civil case, and, on good cause shown, a new trial will take place. Application may be made by a convicted party upon points of law in arrest of judgment. The bill also allows a bill of exceptions, and an ultimate appeal to the House of Lords. To prevent the abuse of the privilege, it is proposed to invest the judge with a discretionary power, either to pass and execute the sentence, or to postpone the passing and execution of it. The measure was opposed by the government, and since the above was written it has been withdrawn.

**APPRAISEMENT** (from the French *apprécier*, *appriser*, or *appraiser*, and remotely from the Latin *pretium*, to set a price upon an article). When goods have been taken under a distress for rent, it is necessary, in order to enable the landlord to sell them according to the provisions of the statute 2 William and Mary, sess. i. c. 5, that they should be previously appraised or valued by two appraisers. These appraisers are sworn by the sheriff, under-sheriff, or constable, to appraise the goods truly according to the best of their understanding. After such an appraisal has been made, the landlord may proceed to sell the goods for the best price that can be procured. By the statute 48 Geo. III. c. 140, an *ad valorem* stamp duty was imposed upon appraisements.

**APPRAISERS** (French, *appréciateurs*) are persons employed to value property. By the statute 46 Geo. III. c. 43, it was first required that any person exercising the calling of an appraiser should annually take out a licence to act as such, stating his name and place of abode, and signed by two commissioners of stamps. By the same statute a stamp duty of 6s. was imposed upon such licences; and unlicensed persons were forbidden to act as appraisers under a penalty of 50*l*. The duty imposed by the General Stamp Act,

55 Geo. III. c. 104, is 10*s*. The number of licensed appraisers in London is about nine hundred, and in other parts of England and Wales there are about seventeen hundred.

**APPRENTICE** (from the French *apprenti*, which is from the verb *apprendre*, to learn) signifies a person who is bound by indenture to serve a master for a certain term, and receives, in return for his services, instruction in his master's profession, art, or occupation. In addition to this, the master is often bound to provide food and clothing for the apprentice, and sometimes to pay him small wages, but the master often receives a premium. In England the word was once used to denote those students of the common law in the societies of the inns of court who—not having completed their professional education by ten years' study in those societies, at which time they were qualified to leave their inns and to execute the full office of an advocate, upon being called by writ to take upon them the degree of serjeant-at-law—were yet of sufficient standing to be allowed to practise in all courts of law except the court of Common Pleas. This denomination of apprentice (in law Latin *apprenticii ad legem nobiliores*, *apprenticii ad barras*, or simply *apprenticii ad legem*) appears to have continued until the close of the sixteenth century, after which this term fell into disuse, and we find the same class of advocates designated, from their pleading without the bar, as *outer barristers*, now shortened into the well-known term *barristers*. (Spelman, *Gloss. ad verbum*; Blackstone, *Commentaries*, vol. i. 23; vol. iii. 27.)

The system of apprenticeship in modern Europe is said to have grown up in conjunction with the system of associating and incorporating handicraft trades in the twelfth century. The corporations, it is said, were formed for the purpose of resisting the oppression of the feudal lords, and it is obvious that the union of artisans in various bodies must have enabled them to act with more power and effect. The restraint of free competition, the maintenance of peculiar privileges, and the limitation of the numbers of such as should participate in them, were the

main results to which these institutions tended; and for these purposes a more effective instrument than apprenticeship could hardly be found. To exercise a trade, it was necessary to be free of the company or fraternity of that trade; and as the principal if not the only mode of acquiring this freedom in early times was by serving an apprenticeship to a member of the body, it became easy to limit the numbers admitted to this privilege, either indirectly by the length of apprenticeship required, or more immediately by limiting the number of apprentices to be taken by each master. So strict in some instances were these regulations, that no master was allowed to take as an apprentice any but his own son. In agriculture, apprenticeship, though in some comparatively later instances encouraged by positive laws, has never prevailed to any great extent. The tendency to association indeed is not strong among the agricultural population, combination being, to the scattered inhabitants of the country, inconvenient and often impracticable; whereas the inhabitants of towns are by their very position invited to it.

Subsequently to the twelfth century, apprenticeship has prevailed in almost every part of Europe—in France, Germany, Italy, and Spain, and probably in other countries. It is asserted by Adam Smith, that seven years seem once to have been all over Europe the usual term established for the duration of apprenticeships in most trades. There seems, however, to have been no settled rule on this subject, for there is abundant evidence to show that the custom in this respect varied not only in different countries, but in different incorporated trades in the same town.

In Italy, the Latin term for the contract of apprenticeship was *aconventatio*. From an old form of an Italian instrument, given by Beier in his learned work *De Collegiis Opificum*, it appears that the contract, which in most respects closely resembled English indentures of apprenticeship, was signed by the father or other friend of the boy who was to be bound, and not by the boy himself, who testified his consent to the agreement merely by being present.

In France, the trading associations prevailed to a great extent under the names of "Corps de Marchands" and "Communautés." Many of them had been established by the crown solely for the purpose of raising revenue by the grant of exclusive privileges and monopolies. At the latter end of the seventeenth century there were in Paris six "Corps de Marchands," and one hundred and twenty-nine "Communautés," or companies of tradesmen, each fraternity having its own rules and laws. Among these bodies the duration of apprenticeship varied from three to eight or ten years. It was an invariable rule in the "Corps de Marchands," which was generally followed in the "Communautés," that no master should have more than one apprentice at a time. There was also a regulation that no one should exercise his trade as a master until, in addition to his apprenticeship, he had served a certain number of years as a journeyman. During the latter term he was called the "compagnon" of his master, and the term itself was called his "compagnonage." He had also, before being admitted to practise his trade as master, to deliver to the "jurande," or wardens of the company, a specimen of his proficiency in his art, called his "chef d'œuvre." He was then said "aspirer à la maîtrise." The sons of merchants living in their father's house till seventeen years of age, and following his trade, were reputed to have served their apprenticeship, and became entitled to the privileges incidental to it without being actually bound. These companies or associations were abolished at the Revolution, when a perfect freedom of industry was recognised by law, and this, with a few exceptions, has continued to the present day. But though the contract of apprenticeship, so far as a fixed period goes, has ceased in France to be imperative upon the artisan, it has not fallen into disuse; a law of 22 Germinal, An XI. (12th April, 1803), prescribes the rights and duties both of master and apprentice. It does not, however, lay down any particular form, and leaves the time and other conditions of the contract to be determined by the parties.

In Germany, though we find the same

institution, it varies not only in the name, but has some other remarkable peculiarities. The companies, there called *gilden*, *zünfte*, or *innungen*, appear, both on account of moral and physical defects, to have refused admission to applicants for freedom, at the discretion of the elders or masters. They seem to have occasionally admitted workmen who had not served a regular apprenticeship into the lower class of members of a trade; but only those were allowed to become masters who had gone through the regular stages of instruction. The course, which continues to the present day, is as follows:—The apprentice, after having served the term prescribed by his indenture (*aufdings-brief*), is admitted into the company as a companion (*gesell*), which corresponds in many respects to the French *compagnon*. Having passed through the years of his apprenticeship, called *lehrjahre*, satisfactorily, he becomes entitled to receive from the masters and companions of the guild a certificate, or general letter of recommendation (*kundschaft*), which testifies that he has duly served his apprenticeship, and has been admitted a member of the company, and commends him to the good offices of the societies of the same craft, wherever he may apply for them. With this certificate the young artisan sets out on his travels, which often occupy several years, called *wandel-jahre*, supporting himself by working as a journeyman in the various towns in which he temporarily establishes himself, and availing himself of his *kundschaft* to procure admission into the fellowship and privileges of his brother-workmen of the same craft. On his return home, he is entitled, upon producing certificates of his good conduct during his *wandel-jahre*, to become a master. In Germany, the periods of servitude have varied in different states and at different periods; in general, the term is seven years; but in some instances an apprenticeship of five or three years is sufficient.

Neither in Ireland nor in Scotland have the laws relating to associated trades or apprentices been very rigorously enforced. In Ireland the same system of guilds and companies certainly existed; but, as it was the policy of the English government

to encourage settlers there, little attention was paid to their exclusive privileges; and in 1672 the lord-lieutenant and council, under authority of an Act of Parliament, issued a set of rules and regulations for all the walled towns in Ireland, by which any foreigner was allowed to become free of the guilds and fraternities of tradesmen on payment of a fine of 20s. A statute containing very similar enactments was passed in 19 George III. The term of apprenticeship, also, in Ireland, was of a moderate length, five years being required by 2 Anne, c. 4, for the linen manufacture, which, by 10 George I. c. 2, was reduced to four years. It is asserted by Adam Smith, that there is no country in Europe in which corporation laws have been so little oppressive as in Scotland. Three years are there a common term of apprenticeship even in the nicer trades, but there is no general law on the subject, the custom being different in different communities.

It is, perhaps, impossible to ascertain precisely at what time apprenticeships first came into general use in England. But that the institution is one of very old date is certain, being probably contemporaneous with the formation of the guilds or companies of tradesmen. It appears from Herbert's 'History of the Twelve Livery Companies of London,' that in 1335, when the warder's accounts of the Goldsmiths' Company begin, there were fourteen apprentices bound to members of the company. In the statutes of the realm, however, there is no reference to such an institution for about 200 years after the guilds are known to have existed, apprentices being first incidentally noticed in an act (12 Rich. II. c. 3) passed in 1388. In 1405-6 (7 Henry IV. c. 17) a statute was passed which enacted that no one shall bind his son or daughter apprentice unless he have land or rent to the value of 20s. by the year; the cause of which provision is stated to be the scarcity of labourers in husbandry, in consequence of the custom of binding children apprentices to trades. In the act (8 Henry VI. c. 11) which repealed this statute in favour of the city of London, the putting and taking of apprentices are stated to have been at that time a custom

of London time out of mind. The same statute was repealed (by 11 Henry VII. c. 11) in favour of the citizens of Norwich, and (by 12 Henry VII. c. 1) in favour of the worsted-makers of Norfolk; and in the former act we find the first mention of any particular term of servitude, the custom of the worsted-shearers of Norwich being confirmed by it, which required an apprenticeship of seven years. Except in London, it does not appear that at an early period there was in England any uniform practice in this respect, but that the duration of the apprenticeship was a matter for agreement between the parties to the contract. In Madox's *Formulare Anglicanum* there is an indenture of apprenticeship dated in the reign of Henry IV., which is nearly in the same form as the modern instrument; and in that case the binding is to a carpenter for six years. It is, however, probable that before the statute of 5 Eliz. c. 4, the term of apprenticeship was seldom less than seven years. In London, the period of seven years at the least was expressly prescribed by the custom as the shortest term; and Sir Thomas Smith, in his *Commonwealth of England*, written about the time of the passing of the statute of Elizabeth, says, in reference to the previous practice, that the apprentice "serveth, some for seven or eight years, some nine or ten years, as the master and the friends of the young man shall think meet, or can agree together."

The statute of 5 & 6 Edw. VI. c. 8, which enacts that no person shall weave broad woollen-cloth, unless he has served a seven years' apprenticeship, may be adduced as a further proof that this term was fast becoming the customary one. By 5 Elizabeth, c. 4, it was declared that no person should "set up, occupy, use, or exercise any craft, mystery, or occupation, then used or occupied within the realm of England or Wales, except he should have been brought up therein seven years at the least as an apprentice." But neither by that statute nor by the customs of London and Norwich, which were excepted by the act, was a longer term of apprenticeship than seven years forbidden. The following are some of the chief provisions of the

statute of Elizabeth:—Householders who have at least half a ploughland in tillage may take any one as an apprentice above the age of ten and under eighteen, until the age of twenty-one or twenty-four as the parties may agree. Householders of the age of twenty-four in cities may take apprentices in trades for seven years, who must be sons of freemen not being labourers nor engaged in husbandry. Merchants in any city or town corporate trafficking in foreign parts, mercers, drapers, goldsmiths, ironmongers, embroiderers, or clothiers, are not to take any apprentices, except their own sons, unless their parents have 40s. freehold a year. Persons residing in market-towns, if of the age of twenty-four, may take two apprentices, who must be children of artificers, but merchants in market-towns are not to take any apprentices other than children whose parents have 3l. a year freehold. In the following trades the children of persons who had no land might be taken as apprentices: smiths, wheelwrights, ploughwrights, millwrights, carpenters, rough masons, plasterers, sawyers, lime-burners, brick-makers, bricklayers, tilers, slaters, healyers, tile-makers, linen-weavers, turners, coopers, millers, earthen-potters, woollen-weavers, weaving housewife's or of household cloth only and none other, cloth-pillers, otherwise called tuckers or walkers, burners of ooze and woad ashes, thatchers, and shinglers. Woollen cloth-weavers, except in cities, towns corporate, or market-towns, are not to take as apprentices children whose parents were not possessed of 3l. a year freehold, but they might take their own sons as apprentices: the woollen-weavers of Cumberland, Westmoreland, Lancashire, and Wales were exempted from the operation of this clause. There was a clause in the act which gave to one justice the power of imprisoning persons (minors) who refused to become apprentices. The justices were empowered to settle disputes between masters and apprentices, and could cancel the indentures. This statute of Elizabeth was repealed in 1814 by 54 Geo. III. c. 96.

The London apprentices, in early times, were an important and often a formidable

body. They derived consequence from their numbers, the superior birth of many of them, and the wealth of their masters, but particularly from their union, and the spirit of freemasonry which prevailed among them. The author of a curious poem published in 1647, entitled *The Honour of London Apprentices*, observes, in his preface, that "from all shires and counties of the kingdom of England and dominion of Wales, the sons of knights, esquires, gentlemen, ministers, yeomen, and tradesmen, come up from their particular places of nativity and are bound to be prentices in London." He also mentions "the unanimous correspondence that is amongst that innumerable company." In the sixteenth and seventeenth centuries there are recorded a constant succession of tumults, and some instances of serious and alarming insurrections among the apprentices. Thus the fatal riot in London against foreign artificers, which took place on the 1st of May, 1517, and from which that day was called 'Evil May-Day,' was commenced and encouraged by the apprentices. In the year 1595, certain apprentices in London were imprisoned by the Star-Chamber for a riot; upon which, several of their fellows assembled and released them by breaking open the prisons. Many of these were taken and publicly whipped by order of the Lord Mayor. This caused a much more formidable disturbance; for 200 or 300 apprentices assembled in Tower-street, and marched with a drum in a warlike manner to take possession of the person of the Lord Mayor, and, upon the principle of retaliation, to whip him through the streets. Several of the ring-leaders in this riot were tried and convicted of high treason. (*Criminal Trials*, vol. i. p. 317.)

In the troubles of the civil wars the apprentices of London took an active part as a political body; numerous petitions from them were presented to the parliament, and they received the thanks of the House "for their good affections." Nor did they confine their interference merely to petitions, but, under sanction of an ordinance of parliament which promised them security against forfeiture of their indentures, they were enrolled into

a sort of militia. They also took part in the Restoration, and in the reign of Charles II. they were frequently engaged in tumults. The last serious riot in which they were concerned took place in 1668. On this occasion they assembled together tumultuously during the holidays, and proceeded to pull down the disorderly houses in the city. For this exploit several of them were tried and executed for high treason.

In 1681, when Charles II. was desirous of strengthening his hands against the corporation of London, he thought it necessary to endeavour to secure the favour of the apprentices, and sent them a brace of bucks for their annual dinner at Sadlers' Hall, where several of his principal courtiers dined with them. The apprentices, however, were divided in opinion; for there were numerous petitions from them both for and against the measures of the court. Subsequently to this time their union appears to have been gradually dissolved, and we do not find them again acting together in a body.

The apprentice laws were enacted at a time when the impolicy of such legislation was not perceived. But opinion gradually became opposed to these enactments, and the judges interpreted the law favourably to freedom of trade. Lord Mansfield denounced the apprentice laws as being "against the natural rights of man, and contrary to the common law rights of the land." Accordingly the decisions of the courts tended rather to confine than to extend the effect of the statute of Elizabeth, and thus the operation of it was limited to market-towns, and to those crafts, mysteries, and occupations which were in existence at the time it was passed. And although, in consequence of this doctrine, many absurd decisions were made, yet the exclusion of some manufactures, and particularly of the principal ones of Manchester and Birmingham, from the operation of the act, had probably a favourable effect in causing it to be less strictly enforced even against those who were held to be liable to it. It was proved by a mass of evidence produced before a committee of the House of Commons in

1814, that the provisions of the statute of Elizabeth neither were nor could be carried into effect in our improved state of trade and manufactures. An alteration in the law could therefore be no longer delayed. And though the question was brought before the legislature on a petition praying that the 5 Eliz. c. 4, might be rendered more effectual, the result was the passing of an act (54 Geo. III. c. 96) by which the section of that statute which enacts that no person shall exercise any art, mystery, or manual occupation without having served a seven years' apprenticeship to it, was wholly repealed. There is in the act of 54 Geo. III. c. 96, a reservation in favour of the customs and bye-laws of the city of London, and of other cities, and of corporations and companies lawfully constituted; but the necessity of apprenticeship as a means of access to particular trades is abolished, and a perfect liberty in this respect is established. Apprenticeship however is one mode of acquiring the freedom of municipal boroughs.

Apprenticeship, though no longer legally necessary (except in a few cases), still continues to be the usual mode of learning a trade or art, and contracts of apprenticeship are very common. By common law, an infant, or person under the age of twenty-one years, being generally unable to form any contract, cannot bind himself apprentice so as to entitle his master to an action of covenant for leaving his service or other breaches of the indenture. The statute 5 Eliz. c. 4, s. 42 and 43, enacts that every person bound by indenture according to the statute, although within the age of twenty-one, shall be bound as amply, to every intent, as if he were of full age. But by these words of the statute, the infant is not so bound that an action can be maintained against him upon any covenant of the indenture; and it has therefore been a common practice for a relation or friend to be joined as a contracting party in the indenture, who engages for the faithful discharge of the agreement. But by the custom of London, an infant, unmarried, and above the age of fourteen, may bind himself apprentice to a freeman of London, and it is said that, by force of the cus-

tom, the master may have such remedy against him as if he were of full age, and consequently an action of covenant.

By the statute 43 Eliz. c. 2, s. 4, the churchwardens and overseers of a parish, with the assent of two justices of the peace, might bind children of paupers apprentices till the age of twenty-four; but by 18 Geo. III. c. 47, they could not be retained as apprentices beyond their 21st year. Under other acts, not only persons in husbandry and trade, but gentlemen of fortune and clergymen, may be compelled to take pauper children as apprentices. But if such master is dissatisfied, he may appeal to the sessions. Parish apprentices may also be bound (2 & 3 Anne, c. 6) to the sea service; and masters and owners of ships are obliged to take one or more according to the tonnage of the vessel. The number of apprenticed seamen who were registered in 1840, pursuant to 5 & 6 Will. IV. c. 19, was 24,348. Various regulations have been made by several acts of parliament, and in particular by 56 Geo. III. c. 139, for ensuring that parish apprentices shall be bound to proper masters, and securing them from ill-treatment. By 4 & 5 Will. IV. c. 76, s. 61, justices must certify that the rules of the Poor Law Commissioners as to the binding of parish apprentices have been complied with, but the Poor Law Commissioners have not yet issued any rules and regulations on this subject. In 7 & 8 Vict. c. 101, for the further amendment of the Poor Law, the Commissioners are invested with the power of carrying out certain matters relating to parish apprentices. There is a clause in the act abolishing compulsory apprenticeship. In 1842 an act was passed which extends the power of magistrates to adjudicate in cases in which no premium has been paid. (5 Vict. c. 7.) A settlement is gained by apprentices in the parish where they last resided forty days in service (13 & 14 Charles II. c. 12). [SETTLEMENT.] By 5 & 6 Vict. c. 99, all indentures whereby females are bound to work in mines are void.

An indenture cannot be assigned over, either by common law or equity, but by custom it may. Thus, by the custom of

London and other places it may be done by a "turn-over." Parish apprentices may also (32 Geo. III. c. 57, s. 7), with the consent of two justices, be assigned over by indorsement on the indentures.

An indenture is determinable by the consent of all the parties to it; it is also determined by the death of the master. But it is said that the executor may bind the apprentice to another master for the remainder of his term. And if there is any covenant for maintenance, the executor is bound to discharge this as far as he has assets. In the case of a parish apprentice (32 Geo. III. c. 57, s. 1), this obligation only lasts for three months, where the apprentice-fee is not more than 5*l.*, and the indenture is then at an end, unless upon application by the widow or executor, &c. of the master, to two justices, the apprentice is ordered to serve such applicant for the remainder of the term. By the custom of London, if the master of an apprentice die, the service must be continued with the widow, if she continue to carry on the trade. In other cases it is incumbent on the executor to put the apprentice to another master of the same trade. By the Bankrupt Act, 6 Geo. IV. c. 16, s. 49, it is enacted, that the issuing of a commission against a master shall be a complete discharge of an indenture of apprenticeship; and where an apprentice-fee has been paid to the bankrupt, the Commissioners are authorized to order any sum to be paid out of the estate for the use of the apprentice which they may think reasonable. A duty on apprentices' indentures, varying with the premium, was first imposed by 8 Anne, c. 9.

A master may by law moderately chastise his apprentice for misbehaviour; but he cannot discharge him. If he has any complaint against him, or the apprentice against his master, on application of either party to the sessions, by 5 Eliz. c. 4, or to two justices in the case of a parish apprentice, by 20 Geo. II. c. 19, and other acts, a power is given to punish or to discharge the apprentice, and in some cases to fine the master. If any apprentice, whose premium does not exceed 10*l.*, run away from his master, he may be compelled (6 Geo. III. c. 25) to serve be-

yond his term for the time which he absented himself, or make suitable satisfaction, or be imprisoned for three months. If he enters another person's service, his master is entitled to his earnings, and he may bring an action against any one who has enticed him away.

In London, in case of misconduct by the master towards the apprentice, or by the apprentice towards the master, either party may summon the other before the chamberlain, who has power to adjudicate between them, and, upon the disobedience or refractory conduct of either party, may commit the offender to Bridewell. The wardens of the different Livery Companies had formerly jurisdiction in matters of disputes between the apprentices and masters in their respective crafts; and in Herbert's 'History of the Twelve principal Companies' there is some curious information respecting regulations for apprentices, their dress, duties, &c.

We cannot fairly judge the institution of Apprenticeship, without an accurate examination of the circumstances under which it arose. That it had its uses cannot be doubted, and the continuance of the practice in this country, since it has ceased to be required by law, is some evidence in favour of the institution. Except in the case of surgeons and apothecaries, proctors, solicitors, attorneys, and notaries, there is now no apprenticeship required by law in England.

The impolicy of the old apprentice laws as they existed in France and England has been shown by many writers (Droz, *Economie Politique*, p. 114, &c.; Adam Smith, *Wealth of Nations*, book i. chap. 10). These laws and regulations were either part of the system of guilds, or were made in conformity to the objects of such system. Adam Smith says that apprenticeships were "altogether unknown to the ancients;" and "the Roman law is perfectly silent with regard to them." This may be so: but as the guilds or companies in Rome (*collegia*) were very numerous, it is possible that they had for their object to limit the numbers of those who should practise their several arts and mysteries; and apprenticeships might be one mode of effecting this, though it is true, as Adam Smith observes, that there appears



to be "no Greek or Latin word which expresses the idea we now annex to the word apprentice, a servant bound to work at a particular trade for the benefit of a master, during a term of years, upon condition that the master shall teach him that trade." It has been observed on this, that such a word could not have been required, when nearly all who worked for a master were slaves. But if many or most of the workmen were slaves, the masters were not, and the members of the companies could not be slaves. Adam Smith asserts that long apprenticeships are altogether unnecessary; and he affirms that "the arts which are much superior to common trades, such as those of making clocks and watches, contain no such mystery as to require a long course of instruction." But in this and other passages, he rather underrates the time that is necessary for attaining sufficient expertness in many arts, though he truly observes that agriculture, in which our law never required apprenticeship, and in which apprenticeship is little in use, and "many inferior branches of country labour, requires much more skill and experience than the greater part of mechanic trades." Wherever the law allows the contract of apprenticeship to be unrestrained, its terms will be regulated by custom, which though it may be sometimes unreasonable or absurd, must finally adapt itself to true principles in a country where industry is free and wealth is consequently accumulating. Those who have an art, mystery, craft, or trade to teach, and can teach it well, and give a youth every opportunity of learning it sufficiently, will always be sought after by parents and guardians of children in preference to other masters, and the terms of the contract will be less favourable in a pecuniary point of view to the parent or guardian than in cases where the master cannot offer those advantages. The good master may require a sum of money with the apprentice, and may require his services for a longer period than is necessary for him to master the mystery, craft, or trade. In other cases a master may often be glad to get an apprentice, that is, in other words, a servant, for as long a time as he can, and without requiring any money with him. The contract of ap-

prenticeship in various trades will, as already observed, be regulated by custom, but it cannot remain unaffected by the general principles of the demand and supply of labour.

In most professions of the more liberal kind there is in England no contract of apprenticeship; the pupil or learner pays a fee, and has the opportunity of learning his teacher's art or profession if he pleases. Thus a man who intends to be called to the bar pays a fee to a special pleader, a conveyancer, or an equity draftsman, and has the liberty of attending at the chambers of his teacher and learning what he can by seeing the routine of business and assisting in it. But he may neglect his studies, if he pleases, and this will neither concern his master, who can very well dispense with the assistance of an ignorant pupil, and gets the money without giving anything for it, nor the public. For though the barrister is admitted by the inns of court without any examination, and may be utterly ignorant of his profession, no mischief ensues to the public, because the rules of the profession do not permit him to undertake business without the intervention of an attorney or solicitor, and no one would employ him without such intervention. But the attorney or solicitor is required by act of parliament to serve a five years' apprenticeship, the reasons for which are much diminished since the institution of an examination by the Incorporated Law Society in Chancery Lane, London, before he can be admitted to practise. Indeed a part of the time which is now spent in an attorney's office would be much better spent at a good school, and would perhaps cost the parent or guardian as little. There is frequently a fee paid with an apprentice to an attorney or solicitor, and there is a stamp duty of 120*l.* on his indentures; so that it is probable that the raising of revenue was one object in legislating on this matter. Persons who practise as physicians serve no apprenticeship, but they are subjected to examinations; all persons who practise as apothecaries must serve a five years' apprenticeship. The reasons for this apprenticeship also are much diminished by the institution of examinations, at which persons are rejected

who have not the necessary knowledge, though they have served the regular period of apprenticeship. If the examination of the attorney and apothecary is sufficiently strict, that is a better guarantee for their professional competence than the mere fact of having served an apprenticeship. Yet the apprenticeship is some guarantee for the character of the apothecary and solicitor, which the examination alone cannot be, for a youth who has much misconducted himself during his apprenticeship cannot receive the testimonial of his master for good conduct, and he is liable to have his indentures cancelled. The attorney and apothecary belong to two classes whose services are constantly required by the public, who have little or no means of judging of their professional ability. A man can tell if his shoemaker or tailor uses him well, but his health may be ruined by his apothecary, or his affairs damaged by his attorney, without his knowing where the fault lies. There is no objection, therefore, to requiring apprenticeship or any other condition from an attorney or apothecary which shall be a guarantee for his professional competence, but nothing more should be required than is necessary, and it is generally agreed that an apprenticeship of five years is not necessary. If, however, the law were altered in this respect, it is very possible that the practice of five years' apprenticeship might still continue; and there would be no good reason for the law interfering if the parties were willing to make such a contract.

In all those arts, crafts, trades, and mysteries which a boy is sent to learn at an early age, a relation analogous to that of master and servant, and parent and child, is necessary both for the security of the master and the benefit of the boy. Adam Smith speaks of apprenticeship as if the only question was the length of time necessary to learn the art or mystery in. If parents can keep their children at home or at school till they approach man's estate, the control created by the contract of apprenticeship is less necessary, and the term for serving a master need not be longer than is requisite for the learning of the art. Still, if the con-

tract is left free by the law, it will depend on many circumstances, whether the master will be content with such a period he may require either more money with the apprentice and less of his service, or less of his money and more of his service. This is a matter that no legislator can usefully interfere with. But when boys leave home at an early age, and are sent to learn an art, it is necessary that they should be subjected to control, and for a considerable period. They must learn to be attentive to their business, methodical, and well-behaved; and if their master sets them a good example, the moral discipline of a boy's apprenticeship is useful. If the master does not set a good example, the effect will be that he will not be so likely to have apprentices; for an apprenticeship partakes of the nature of a school education, an education in an art or mystery, and a preparation for the world; and a master who can best prepare youths in this threefold way is most likely to have the offer of apprentices.

APPRIISING. [ADJUDICATION.]

APPROPRIATION. [ADVOWSON.]

APPROVER. By the old English law, when a person who had been arrested, imprisoned, and indicted for treason or felony, confessed the crime charged in the indictment, and was admitted by the court to reveal on oath the accomplices of his guilt, he was called an *approver*.

The judge or court might in their discretion give judgment and award execution upon the party confessing, or admit him to be an approver. In the latter case a coroner was directed to receive and record the particulars of the approver's disclosure, which was called an *appeal*, and process was thereupon issued to apprehend and try the *appellees*, that is, the persons whom the approver had named as the partners of his crime.

As the approver, in revealing his accomplices, rendered himself liable to the punishment due to the crime which he had confessed, and was only respited at the discretion of the court, it was considered that an accusation, made under such circumstances, was entitled to peculiar credit, and the accomplices were

therefore put upon their trial without the intervention of a grand jury.

Here, however, as in other appeals [APPEAL], the parties accused by the approver were allowed to choose the mode of trial, and the approver might be compelled to fight each of his accomplices in succession. But, unlike an appeal by an innocent person, the prosecution at the suit of an approver might be defeated and discharged by a pardon granted by the king either to the approver or to the appellee.

If the approver failed to make good his appeal, judgment of death was given against him. If he succeeded in convicting the appellee, he was entitled to a small daily allowance from the time of being admitted approver, and to a pardon from the king.

The appeal by approvers had become obsolete before the abolition of it by parliament; and the present practice is to prefer a bill of indictment against all parties implicated in the charge, except the approver, and to permit the criminal who confesses his guilt to give evidence against his companions before the grand jury. If upon the trial the demeanour and testimony of the accomplice are satisfactory to the court, he is recommended to the mercy of the crown. (See 2 Hawk., *Crown Law*, ch. 24.)

ARBITRATION is the adjudication upon a matter in controversy between private individuals appointed by the parties. This mode of settling differences is very frequently resorted to as a means of avoiding the delay and expense of an action at law or a suit in equity. It has the advantage of providing an efficient tribunal for the decision of many causes—such, for instance, as involve the examination of long and complicated accounts,—which the ordinary courts are, from their mode of proceeding and the want of proper machinery, incompetent to investigate.

The person appointed to adjudicate is called an arbitrator, or referee. The matter on which he is appointed to adjudicate is said to be referred or submitted to arbitration. His judgment or decision is called an arbitrament, or, more usually, an award.

Most matters actually in controversy between private persons may be referred to arbitration; but an agreement to refer any differences which may hereafter arise is not binding, for the parties cannot be compelled to name an arbitrator. But an agreement may be made to refer any dispute that may arise to arbitration, with a condition of certain penalties, to be paid by the party who shall refuse to agree in the appointment of an arbitrator. No injury can be the subject of an arbitration, unless it is such as may be a matter of civil controversy *between the parties*: a felony, for instance, which is a wrong, not to the party injured merely, but to society in general, cannot be referred.

There are no particular qualifications required for an arbitrator. In matters of complicated accounts, mercantile men are usually preferred. In other cases, it is usual to appoint barristers, who, being accustomed to judicial investigations, are able to estimate the evidence properly, to confine the examination strictly to the points in question, and, in making the award, to avoid those informalities for which it might afterwards be set aside. Both time and expense are thus saved by fixing on a professional arbitrator. Any number of persons may be named as arbitrators: if the number is even, it is usually provided that, if they are divided in opinion, a third person shall be appointed, called an umpire, to whose sole decision the matter is then referred.

A dispute may be referred to arbitration, either—1. When there is an action or suit already pending between the parties relating thereto, or—2. When there is no such action or suit.

1. In the former case, the parties to the action or suit, if *sui juris*, are in general competent to submit to arbitration. The reference may be made at any stage of the proceedings: if before trial, it is effected by a rule of the court of law or an order of the court of equity in which the action or suit is brought; if at the trial, by an order of the judge or an order of Nisi Prius, either of which may afterwards be made a rule of court. The usual mode of proceeding in a case referred to arbitration where an action is pending, is for

the parties to consent that a verdict shall be given for the plaintiff for the damages laid in the declaration, subject to the award of the arbitrator.

The person named as arbitrator is not bound to accept the office, nor, having accepted, can he be compelled to proceed with it. In either case, if the arbitrator refuses or ceases to act, the reference is at an end, unless the contingency has been provided for in the submission, or unless both parties consent to appoint some other person as arbitrator in his stead.

The order of reference usually provides that the award shall be made within a certain period; and if the arbitrator lets the day slip without making his award, his authority ceases, but a clause has usually been inserted to enable the arbitrator to enlarge the time; and now, independently of any such clause, the court, or any judge thereof, is, by the late statute for the amendment of the law (3 & 4 Will. IV. c. 42), empowered to do so. The authority of an arbitrator ceases as soon as he has made or declared his award. After this (even though it be before the expiration of the time appointed) he has no longer the power even of correcting a mistake.

When the arbitrator has accepted his office, he fixes the times and place for the parties to appear before him. Each of them furnishes him with a statement of his case, which is usually done by giving him a copy of the briefs on each side; and on the day appointed he proceeds to hear them (either in person, or by their counsel or attorneys), and to receive the evidence on each side, nearly in the same manner as a judge at an ordinary trial: but he is frequently invested by the order of reference, with a power of examining the parties themselves.

No means existed of compelling the attendance of witnesses, or the production of documents, before an arbitrator, until the statute 3 & 4 Will. IV. c. 42, authorized the court or a judge to make an order to that effect; disobedience to which order, if served with proper notice of the time and place of attendance, becomes a contempt of court. The witnesses, thus compelled to attend, are entitled to their

expenses in the same manner as at a trial. And where the order requires the witnesses to be examined upon oath, the arbitrator is by the same statute authorized to administer an oath or affirmation, as the case may require; and any person who gives false evidence may be indicted for perjury.

The extent of an arbitrator's authority depends on the terms of the reference: it may either be confined to the action pending between the parties, or it may include any other specified grounds of dispute, or all disputes and controversies whatever existing between them at the time of the reference. Where the matters referred to him are specified, it is his duty to decide upon them all; where they are not specified, it is his duty to decide upon as many as are laid before him. In no case is an arbitrator authorized to adjudicate upon anything not comprehended in the reference; such, for instance, as any claims or disputes which may have arisen after the reference was made, or, where the reference is specific, anything not expressly included in it.

An arbitrator being a judge appointed by the parties themselves for the settlement of their differences, his decision on the merits of the case submitted to him is conclusive. But if his award be partially or illegally made, the superior courts have the power of setting it aside, upon application being made within reasonable time. This happens either, 1. where the award is not co-extensive with the arbitrator's authority; or, 2. where it appears on the face of it to proceed on mistaken views of law, or to fail in some of the qualities required for its validity; or, 3. where any misconduct has been committed. This may happen in two cases: 1st, where the arbitrators have been guilty of corruption or other misbehaviour, as, if they have proceeded to arbitrate without giving notice of the meeting, have improperly refused to receive evidence, or committed any other gross irregularity in practice: 2ndly, where it is proved that the arbitrator has been misled by fraud used by either of the parties. Where an award is absolutely void, as where it is made after the authority of the arbitrator has ceased, it is

not in general necessary to set it aside, for it is incapable of being enforced.

When the award has been made and delivered, if one of the parties refuses to comply with it, the other may bring an action against him on the award. But the most prompt and efficient remedy is to apply to the court for an attachment, grounded on the contempt of court which he has been guilty of by disobeying the order of reference. In opposing this application, the other party may insist on any objection apparent on the award itself; but if there were any other objections affecting its validity, and he has neglected to apply to the court to set it aside within the time fixed by them for that purpose, it is too late for him to avail himself of them.

When, in the original action, a verdict has been given for the plaintiff subject to a reference, if the defendant does not abide by and perform the award, the plaintiff may, by leave of the court, enter a judgment and sue out execution for the whole damages mentioned in the verdict.

2. Where no action has been commenced, the parties may refer their differences to arbitration by mutual agreement. Every person capable of making a disposition of his property may be party to such an agreement: no peculiar form is necessary for its validity.

Whether the submission be verbal or in writing, it is in the power of either of the parties to revoke it, and thus put an end to the authority of the arbitrator at any time before the award is made. In order to prevent this, it is usual for the parties to make it a part of their agreement, that they will abide by and perform the award; and if after this either of them should, without sufficient reason, revoke his submission, or otherwise prevent the arbitrator from proceeding with the arbitration, he will be liable to an action for the breach of his agreement.

The time for making the award may be enlarged, if there be a clause to that effect in the agreement of submission, or if all the parties consent to it, but not otherwise. There are no means of compelling the attendance of witnesses, nor has the arbitrator the power of adminis-

tering an oath; but the witnesses and—if they have agreed to be examined—the parties are sworn either before a judge, or, in the country, before a commissioner. They may, however, be examined without having being sworn, if no objection is made to it at the time.

The courts cannot enforce performance of the award by attachment; the only remedy is an action on the award itself, or rather, on the agreement of submission. The defendant may insist on any objection apparent on the award itself, but where there is any other ground for setting it aside, his only remedy is by a bill in equity.

Thus where the reference is by agreement, many inconveniences occur, particularly from the deficiency of the remedies: but the statute 9 & 10 Will. III. c. 15, enables parties to put such references on the same footing as those which are made where a cause is depending. The statute enacts that all merchants and others, who desire to end any controversy, suit, or quarrel (for which there is no other remedy but by personal action or suit in equity), may agree that their submission of the suit to arbitration or umpirage shall be made a rule of any of the king's courts of record, and may insert such agreement in their submission, or promise, or condition of the arbitration bond; which agreement being proved on oath by one of the witnesses thereto, the court shall make a rule that such submission and award shall be conclusive; and after such rule made, the parties disobeying the award shall be liable to be punished as for a contempt of the court; unless such award shall be set aside for corruption or other misbehaviour in the arbitrators or umpire, proved on oath to the court, within one term after the award is made. The provisions of the new statute 3 & 4 Will. IV. c. 42, apply as well to arbitrations made in pursuance of such agreements of submission, as to those made by order of court; and the law is the same in both cases, except in some few points of practice.

Previously to the 3 & 4 Will. IV. c. 42, the authority of the arbitrator was revocable by either party at any time before the award was made; but by that

statute it is declared that the authority of an arbitrator cannot be revoked by any of the parties, without the leave of the court or a judge: but it is still determined by the death of any of the parties, unless a clause to obviate this is inserted in the submission; and if one of the parties is a single woman, her marriage will have the same effect.

The settlement of disputes by arbitration was usual among the Athenians. Aristotle, in giving an instance of a metaphor that is appropriate without being obvious, quotes a passage from Archytas, in which he compares an arbitrator to an altar, as being a refuge for the injured. He also (*Rhetor.* i. 13) contrasts arbitration with legal proceedings, and adds that the arbitrator regards equity, but the dis-cast (judge in the courts) regards the law (Aristotle, *Rhetor.* iii. 11.) There were at Athens two modes of proceeding which passed by the name of arbitration—the Greek word for which is *diata* (δίατα). In one of these the arbitrators (δισταυηται) appear to have constituted what in modern jurisprudence would be called a Court of Reconciliation. A certain number of persons, of a specified age, were chosen by each tribe, and probably for one year only, as official referees, and from among these the arbitrators to decide upon each particular case were afterwards also chosen (Petit, *Leges Atticæ*, p. 345; Heraldus, *Animadversiones*, p. 370), and were then bound to act, under the pain of infamy. They sat in public, and their judgments were subscribed by the proper authorities, though it does not appear who those authorities were. (Petit, p. 346.) An appeal lay from their decision to the ordinary courts; and sometimes the arbitrator referred the cause to their judgment at once, without pronouncing any sentence of his own. (Heraldus, *Animadversiones*, p. 372.) The jurisdiction of the arbitrators was confined to Athenian citizens, and they took no cognizance of suits in which the sum in dispute was less than ten drachmæ, such smaller actions being disposed of in a summary manner, by a special tribunal. The litigant parties paid the expenses of the arbitration. (Boeckh, *Public Œcon. of Athens*, i. 316,

*English Trans.*) When their year of office expired, the arbitrators were liable to be called to account for their conduct, and if found guilty of corruption or misconduct, were punished with infamy (ἀτιμία).

In the other mode of proceeding, which was strictly in accordance with the definition which we have given of arbitration, the parties were at liberty to refer their differences to whomsoever they chose. The submission was generally made by a written agreement, which frequently contained an engagement by third persons to become sureties for its performance. (Demosthenes, *Speech against Apaturius*, chap. 4.) There lay no appeal from the award of the arbitrator to any other tribunal, unless probably such a right of appeal was reserved in the agreement. (See the law quoted by Demosthenes against Meidas, chap. 26.)

The Roman law upon this subject is much better understood, and is of infinitely greater importance. Its influence has extended over the whole of Europe, and even in our own country it is evident that references made by virtue of a mutual agreement—apparently the first species of arbitration known in our law—are mainly founded upon the doctrines contained in the Digest, iv. tit. 8. The only mode of referring a matter to arbitration in the Roman law was by an agreement called *compromissum*, which contained the names of the arbitrators (hence called *arbitri compromissarii*), the matters intended to be referred, and an undertaking by both parties to abide by the award, or in default thereof to pay to the other a certain sum of money as a penalty. The rule which forbids matters of public interest to be submitted to the judgment of a private referee, was not confined in its operation to criminal prosecutions and penal actions, but extended to preclude arbitrators as well from entertaining any question affecting the civil condition (*status*) of any individual,—his freedom, for instance,—as from deciding on the validity of any contract which it was attempted to set aside on the ground of its having been obtained by fraud or force.

The persons named as arbitrators were not bound to undertake the office, but

having once done so, they might, by an application to the prætor, be compelled to go through with it. Their authority was terminated by the death of either of the parties, unless his heirs were included in the submission; by the expiration of the time limited for the decision; by either party having broken the agreement, and so incurred the penalty; or by his becoming insolvent, and his property, in consequence of a *cessio bonorum*, being vested in his creditors. Their authority also ceased by what we should call an implied revocation, if the subject matter of the reference perished, or if the parties settled the dispute in some other way, referred it to other arbitrators, or proceeded with an action respecting it. Besides the cases in which his authority was thus at an end, an arbitrator could not be compelled to proceed with the reference if he could allege any sufficient excuse, as for instance, that the submission was void, that there had arisen a deadly enmity between him and one of the parties, or that he had been prevented by ill-health, or by an appointment to some public office.

The extent of the arbitrator's authority depended upon the terms of the submission, which might be either special or general. The submission usually appointed a certain day for the making of the award, but power was generally given to the arbitrators to enlarge the time if necessary, and they could not give their award on an earlier day without the consent of the parties. On the day originally appointed, or on that subsequently fixed by the arbitrators, they formally pronounced their award, and (unless it had been agreed otherwise) the parties were required to be present, and if one of them failed to appear, the award was not binding, but the party who had thus prevented the arbitration being completed incurred the penalty specified in the submission. If there were several arbitrators, all were bound to attend, and the opinion of the majority prevailed; and if they were equally divided, it is said that they might of their own authority appoint an umpire, and in case of their refusing, the prætor had the power of compelling them to do so. When their award was pronounced, their authority expired, and

they could neither retract nor alter their decision.

The award when made had not the authority of the sentence of a court of justice, nor was there any direct method of enforcing the performance of it; but as the parties had bound themselves to abide by the arbitrator's decision, if either of them refused to perform it, or in any other way committed a breach of his engagement, he was liable to an action; and however unsatisfactory the award might appear, there was no appeal to any other court. If, indeed, the arbitrators had been guilty of corruption, fraud, or misconduct, or if they had not adhered to their authority, their award was not binding; there was, however, no direct method of setting it aside; but if an action was brought to enforce the award, such misconduct might be insisted on as an answer to it. (Heineccius, *Elem. Jur. Civ.* pars i. § 531-543; Voetius, *Commentarius ad Pandect.* vol. i. pp. 290-300.)

The Roman law was, with some slight modifications, adopted in France (Domat, *Civil Law*, part i. book i. tit. 14; and *Public Law*, book ii. tit. 7; Pothier, *Traité de Procédure Civile*, part ii. chap. iv. art. 2), and notwithstanding the changes which have been introduced from time to time, it still forms the groundwork of the system. There are at present three kinds of arbitration; the first is voluntary arbitration, which is founded, as in the Roman law, upon an agreement of the parties. The mode of proceeding in this case is treated of at considerable length, and with minute attention to details, in the *Code de Procédure Civile*, art. 1003-1028.

The ordinary courts exercise a much greater control over the proceedings in references than they do in England, but they have never had the power which the magistrates had at Rome—of compelling a person who had once undertaken the office of arbitrator to proceed with it; nevertheless, if he fail to do so, without a sufficient excuse, he is liable to an action for the damages occasioned by his neglect of duty. In order to understand clearly the peculiarities of the French system, it will be necessary to bear in mind that the proceedings before the

arbitrators are much more nearly on the same footing with the regular administration of justice than is the case with us, and that many of the details are merely adopted from the practice of the ordinary courts: for instance, there is a system of local judicature established in France, and as the judge is resident in the neighbourhood of the suitors, it has been found necessary, in order to guard against partiality or the suspicion of partiality, to allow either party to refuse or challenge a judge, as in England they would challenge a jurymen; and in the same manner an arbitrator may be challenged, but this can only be in respect of some objection which has arisen since his appointment, for the very act of appointing him is an implied waiver of any objections which might have existed up to that time; but if there is no ground for challenge, the arbitrator's authority cannot be revoked without the consent of both parties.

An arbitrator's decision or award is considered as a judgment, and all the formalities required for the validity of a judgment must therefore be observed; but execution of it cannot be enforced until it has received the proper sanction: this sanction is conferred by a warrant of execution granted by the president of the tribunal within the jurisdiction of which the cause of the action arose: the granting of this warrant is called the homologation of the award. If the arbitrator has not strictly pursued his authority, the warrant of execution may be superseded, and the award declared null by an application to the tribunal from which the warrant issued. Besides this, the same modes of obtaining relief may be resorted to in the case of an award, as in that of any other judgment. If any misconduct or irregularity has occurred, the award may be set aside by what is called a *requête civile*; and even where nothing can be alleged against the formal correctness of the proceedings, if one of the parties be dissatisfied with the judgment, he is at liberty (unless the right has been expressly renounced) to appeal to a superior court: when this happens, the whole case is re-opened before the tribunal of appeal, and the merits investigated anew; and when an award is

brought under the consideration of a court in any of these ways, any final judgment which the court may have pronounced may be brought before the Court of Cassation, and there quashed if erroneous in point of law.

The second kind, which is called "compulsory arbitration," is where the parties are by law required to submit to a reference, and are precluded from having recourse to any other mode of litigation. The ancient laws of France introduced this species of arbitration very extensively for the settlement of disputes respecting either mercantile transactions or family arrangements; but by the law now in force, it is admitted in one case only, that of differences between partners. Over such differences the ordinary courts have no jurisdiction in the first instance, even with the consent of the parties; but the commercial courts control the proceedings. Thus the arbitrators may either be appointed by the deed of partnership or afterwards nominated by the partners; but if, when a dispute has arisen, one of the partners refuses to nominate an arbitrator or nominates an improper person, the commercial court, upon application made by the other partner, will appoint one for him. The authority of the person so appointed will be superseded, if before he enters upon his functions an arbitrator is duly nominated by the partner in delay: and when the firm consists of several partners, upon an application being made by any one of them, the court, after taking into consideration how far their respective interests are identical and how far they are conflicting, will regulate accordingly the number of arbitrators to be appointed by each. The sentence of the arbitrators, howsoever appointed, is decided by the majority of votes.

The authority of the arbitrators in this case partakes more of the judicial character than it does in voluntary arbitration; they are considered as substituted for the ordinary commercial tribunal; their sentence is registered among the records of the court; and they stand upon the same footing with the court in the power of sentencing the parties to imprisonment; and unless the right has been renounced



by the parties, there is an appeal from their decision. (*Code de Commerce*, art. 51-64.)

Besides the compulsory arbitration in matters of partnership, the parties who enter into any engagement are at liberty to stipulate that all differences arising between them shall be submitted to arbitration. This stipulation is compulsory, and the court will, if requisite, appoint an arbitrator *ex officio* for the party who should refuse to do so; but it is not exclusive, so as to take away the jurisdiction of the ordinary tribunals; it may be rescinded by the consent of the parties, or waived by their acts.

The third kind of arbitration is distinguished by the appellation of the persons to whom the reference is made; they are not called, as in the other cases, *arbitres*, but *amiables compositeurs*, or in the old law, *arbitrateurs*. The peculiar characteristics of this amicable composition are, that the referees are not, as in other cases, bound to adhere rigorously to the rules of law, but are authorized to decide according to the real merits of the case; that their decision is final, and without appeal to any other tribunal. In case of irregularity or misconduct, the award may be set aside by the judgment of a court, but this judgment cannot be further questioned in the Court of Cession. This modification of the general law may be introduced into all arbitrations, whether voluntary or compulsory. (Pardessus, *Cours de Droit Commercial*, § 1386-1419.)

In Denmark and its dependencies, Courts of Arbitration or Conciliation were established about the year 1795, and are said to have been attended with extremely beneficial effects. In Copenhagen the court is composed of one of the judges of the higher courts of judicature, one of the magistrates of the city, and one of the representatives of the commonalty. In other towns, the chief magistrate proposes five or six of the more respectable citizens for arbitrators, of whom the commonalty of the town elect two. In the country, the bailiffs or sheriffs are the arbitrators, and generally act as such personally; but in extensive districts they have authority to appoint

deputies. All matters of civil litigation may be referred to these official arbitrators; who in the country sit once in every week, and in the capital as often as occasion requires. It appears that, after investigating a disputed case, the arbitrators in these tribunals have no power to compel the parties to settle their differences in the manner proposed by the court: if they agree, the terms of the arrangement are registered, and it has then the force of a judicial decree; if, after stating their differences and hearing the suggestions of the arbitrators, the parties still disagree, no record is made of the proceeding, and they are at liberty to discuss their respective rights in the ordinary courts of justice. It is necessary, however, that before a suitor commences an action in the superior courts, he should prove that he has already applied to one of the courts of conciliation. These courts, which are attended with very small expense to the suitors, were, soon after their establishment, multiplied rapidly in Denmark and Norway, and are said to have produced an astonishing decrease in the amount of contentious litigation. (*Tableau des Etats Danois*, par Catteau, tome i. p. 296.)

Courts of mutual agreement are constituted in every parish in Norway. Every third year the resident householders elect from among themselves a person to be the commissioner of mutual agreement, who must not practise law in any capacity. His appointment is subject to the approval of the *amtman*, or highest executive officer of the district. In towns, or large and populous parishes, there are one or more assessors or assistants to the commissioner, and he has always a clerk. He holds his court once a month within the parish, and receives a small fee of an *ort* (ninepence) on entering each case. Every case or law-suit whatever must pass through this preliminary court, where no lawyer or attorney is allowed to practise. The parties must appear personally or by a person not in the legal profession. The statement of each party is entered fully and to his own satisfaction in writing by the commissioner, who proposes some course on which they may both agree. If both

parties acquiesce in his judgment, the case is taken to the local court of law, or Sorenskrivers' court, which is also held within each parish, to be sanctioned, revised as to rights of any third parties, and registered, when it has the validity of a final decision. If one party agrees and the other does not, the party not agreeing appeals to the local or Sorenskrivers' court, which sits once, at least, in every parish in every quarter of a year; but he will have the expenses of both parties to pay, if the terms of agreement proposed and rejected are judged not unreasonable. In this higher court, which is, properly speaking, the lowest legal court, the parties may appear, if they choose, by their law agents; but in this and all the subsequent higher courts no new matter, statements, or reference are received but what stand in the protocol of the commissioner of the court of mutual agreement. (*Laing's Journal of a Residence in Norway*, 1836.)

**ARBITRATION.** In Scotland the system of arbitration is a modification of that of the Roman law. The submission, by which the parties agree to abide by the decision of an arbiter, is a regularly executed contract, and it requires all the solemnities peculiar to the execution of deeds in Scotland. According to the practice by which, on the consent of the parties to that effect embodied in its substance, a contract may be registered for execution, the submission may contain a clause authorizing the decree to be pronounced on it to be registered for execution; and when so registered, the arbiter's decision is in the same position as the decree of a court. It was formerly usual to embody a clause of registration for execution against the arbiter if he failed to give a decision. This practice is now disused, but it is still held, according to the doctrine of the civilians, that an arbiter who has accepted the submission can be judicially compelled to decide. Where there were two arbiters, and action was raised against one of them, either to concur with the other or name an oversman (umpire), "the court, without entering on the question how far a sole arbiter is bound to decide, were clear that against one of two arbiters the conclusions of the action were ill-founded."—(*White*

*v. Fergus*, 7th July, 1796, M. 633.) The decree arbitral must be executed with the usual solemnities of written deeds in Scotland. A submission in which the arbiters are not named is not binding on the parties. If there be more than one arbiter, the decree is not valid unless they be unanimous. An oversman may be named in the submission, or the arbiters may be empowered to choose one. It is a condition precedent to any reference to an oversman, that the arbiters are not unanimous, and the proceedings of an oversman are null if there is no difference of opinion. The oversman's decree must bear that the arbiters differed in opinion. A time during which the submission is to be in force may be fixed with or without a power of prorogation. It has become a practice that when a blank space is left in the submission for the period of its continuance, that period is held to be a year. Where there is no such blank, it is presumed that the submission subsists for the period of what is called "the long prescription," viz. 40 years.

**ARCHBISHOP.** [**BISHOP.**]

**ARCHDEACON.** In contemplating the character and office of the bishop in the early ages of the church, we are not to regard him as a solitary person acting alone and without advice. He had a species of clerical council around him, persons who lived a kind of collegiate life in buildings attached to the great cathedral church, each of whom, or at least several of whom, possessed distinct offices, such as those of chancellor, treasurer, precentor, and the like. These persons are now often called canons; but the most general name by which they are known, as the institution existed in remote times, is that of deacon, a term of which dean is a contraction. Deacon appears to come from the Greek term *diákonos* (*διδάκωνος*), the name of that officer in the church of whose appointment we have an account in *Acts*, vi. To one of these deacons precedence was given, and no doubt some species of superintendence or control, and to him the title of *archdeacon* was assigned.

In the name there is no indication of any peculiar employment. What now belongs to the archdeacon was anciently

performed by the officer in the bishop's court called the chorepiscopus. The chorepiscopus (Χορεπίσκοπος) was the bishop's deputy or vicar in small towns and country places, in which he discharged the minor episcopal functions. He might be of episcopal rank or not. (Ducange, *Glossarium*). The chorepiscopus is mentioned in a Constitution of Justinian. (*Cod. i. tit. 3, s. 41 (42).*) The manner in which the archdeacon usurped upon this obsolete officer and attracted to himself the functions which belonged to him, is supposed to have been this:—being near the bishop and much trusted by him, the archdeacon was often employed by the bishop to visit distant parts of the diocese, especially when the bishop required particular and authentic information, and to report to the bishop the actual state of things. Hence deacons were spoken of by very early Christian writers as being the *bishop's eye*; and from this power of inspection and report the transition was easy to the delegation, to one of the deacons, of a portion of episcopal authority, and empowering him to proceed to reform and redress, as well as to observe and report.

If this is a just account of the origin of the archdeacon's power, it is manifest that originally the power would be extended over the whole of a diocese; but at present it is confined within certain limits. In England, according to the *Valor Ecclesiasticus* of King Henry VIII., there are fifty-four archdeaconries, or districts through which the visitatorial and corrective power of an archdeacon extends. Godolphin and Blackstone state that there were sixty archdeaconries: the number has since been increased, and there are now above sixty in England and Wales. Seven new archdeaconries were erected by 6 & 7 Will. IV. c. 97. These are the archdeaconries of Bristol, Maidstone, Monmouth, Westmoreland, Manchester, Lancaster, and Craven; and archidiaconal power was given by the same act to the dean of Rochester in that part of Kent which is in the diocese of Rochester. The constitution of some of these new archdeaconries is contingent; that of Manchester, for instance, will not take place

until the creation of Manchester into a bishop's see, which will not occur until the next vacancy in the see of St. Asaph and Bangor.

This distribution of the dioceses into archdeaconries cannot be assigned to any certain period, but the common opinion is that it was made some time after the Conquest. It is said that Stephen Langton, archbishop of Canterbury, was the first English bishop who established an archdeacon in his diocese, about A.D. 1075. The office of archdeacon is mentioned in a charter of William the Conqueror. (Philimore.) The bishops had baronies, and were tied by the constitutions of Clarendon to a strict attendance upon the king in his great council, and they were consequently obliged to delegate their episcopal powers. Each archidiaconal district was assigned to its own archdeacon, with the same precision as other and larger districts are assigned to the bishops and archbishops; and the archdeacons were entitled to certain annual payments, under the name of procurations, from the benefices within their archdeaconries. The act already cited (6 & 7 Will. IV. c. 97) directed a new arrangement of all existing deaneries and archdeaconries, so that every parish and extra-parochial place shall be within a rural deanery, and every deanery within an archdeaconry, and that no archdeaconry extend out of the diocese.

As the archdeacon in ancient times intruded upon the chorepiscopus, so in recent times he has extinguished the authority and destroyed almost the name of another officer of the church, namely, the rural dean. The archdeaconries are still subdivided into deaneries, and it is usual for the archdeacon, when he holds his visitations, to summon the clergy of each deanery to meet him at the chief town of the deanery. Formerly, over each of the deaneries a substantive officer, called a dean, presided, whose duty it was to observe and report, if he had not even power to correct and reform; but the office has been laid aside in some dioceses, though in others it has been re-established. But where it has been superseded, the duties are discharged by the archdeacon. Though the office of rural

dean has been found extremely useful, no emolument whatever is attached to it.

Archdeacons must have been six full years in priests' orders (§ 27, 3 & 4 Vict. c. 27), and they are appointed by the respective bishops; they are inducted by being placed in a stall in the cathedral by the dean and chapter. By virtue of this *locus in choro a quare impedit* lies for an archdeaconry. (Phillimore.) The duty of archdeacons now is to visit their archdeaconries from time to time: to see that the churches, and especially the chancel, are kept in repair, and that everything is done conformably to the canons and consistently with the decent performance of public worship; and to receive presentations from the churchwardens of matter of public scandal. The visitation of the archdeacon may be held yearly, but he must of necessity have his triennial visitation. Archdeacons may hold courts within their archdeaconries, in which they may hear ecclesiastical causes and grant probates of wills and letters of administration; but an appeal lies to the superior court of the bishop. (24 Hen. VIII. c. 12.) By § 3 of 3 & 4 Vict. c. 86, the archdeacon may be appointed one of the assessors of the bishop's court in hearing proceedings against a clergyman. The judge of the archdeacon's court, when he does not preside himself, is called the Official. Sometimes the archdeacon had a peculiar jurisdiction, in which case his jurisdiction is independent of that of the bishop of the diocese, and an appeal lay to the archbishop. [PECULIAR.] But now, by 6 & 7 Wm. IV. c. 97, § 19, it is enacted that all archdeacons throughout England and Wales shall have and exercise full and equal jurisdiction within their respective archdeaconries, any usage to the contrary notwithstanding.

In the revenue attached to the office of archdeacon, we see the inconvenience which attends fixed money payments in connection with offices which are designed to have perpetual endurance. It arises chiefly from the payments by the incumbents. These payments originally bore no contemptible ratio to the whole value of the benefice, and formed a sufficient income for an active and useful officer of the church; but now, by the great change

which has taken place in the value of money, the payments are little more than nominal, and the whole income of the archdeacons as such is very inconsiderable. The office, therefore, is generally held by persons who have also benefices or other preferment in the church. There have been in recent times cases where archdeacons have held prebends of cathedrals in other dioceses than that in which their jurisdiction was situated; and also instances in which they have had no cathedral preferment. The 1 & 2 Vict. c. 106, § 124, specially exempts archdeacons from the general operation of the act, by permitting two benefices to be held with an archdeaconry. An archdeacon is said to be a corporation sole. Among the recent acts which affect archdeacons the most important are 1 & 2 Vict. c. 106; 3 & 4 Vict. c. 113; and 4 & 5 Vict. c. 39.

Catalogues of the English archdeacons may be found in a book entitled 'Fasti Ecclesiæ Anglicanæ,' by John le Neve. Archdeaconries have been established in some, if not in all, of the dioceses of the new colonial bishops.

ARCHES, COURT OF, is the supreme court of appeal in the archbishopric of Canterbury. It derives its name from having formerly been held in the church of St. Mary le Bow (*de Arcubus*), from which place it was removed about 1567 to the Common Hall of Doctors' Commons, near St. Paul's Church, where it is now held. The acting judge of the court is termed Official Principal of the Court of Arches, or more commonly Dean of the Arches. This court has ordinary jurisdiction in all spiritual causes arising within the parish of St. Mary le Bow and twelve other parishes, which are called a deanery, and are exempt from the authority of the bishop of London. The Court of Arches has also a general appellate jurisdiction in ecclesiastical causes arising within the province of Canterbury, and it has original jurisdiction on subtraction of legacy given by wills which have been proved in the prerogative court of that province. The Dean of the Arches for the time being is president of the College of Doctors of Law, who practise in the Ec-

clesiastical and Admiralty Courts, incorporated by royal charter in 1768, and the advocates and proctors who practise in these courts receive their admission in the Arches Court. The judge is the deputy of the archbishop, who is the judge of the court. The Dean of Arches has always been selected from the College of Advocates. There are four terms in each year, and four sessions in each term. An appeal lay from this court to the Court of Delegates, or more strictly to the king in chancery (25 Henry VIII. c. 19), by whom delegates were appointed to hear each cause, the appeal being to him as head of the church, in place of the Pope. By 2 & 3 Will. IV. c. 92, appeals are transferred from the Court of Delegates to the king in council. The ecclesiastical courts are competent to entertain criminal proceedings in certain cases, and also to take cognizance of causes of defamation; for which last offence persons were formerly directed to do penance, but this has very rarely been required by the Arches Court of late years. There is no salary attached to the office of judge; and his income arising from fees, as also that of the registrar, is very small. One judge has for many years presided in the Arches and in the Prerogative Court.

There are no bye-laws, regulations, or resolutions made by proctors of the Arches or Prerogative Courts of Canterbury, relating to the articling of clerks to proctors, or to the admission of proctors. The articling of clerks and admission of proctors are regulated by a statute of the Archbishop of Canterbury, bearing date the 30th of June, 1696. By this statute, the number of proctors having then increased to forty, it was, among other things, ordained that there should be thirty-four proctors *exercent* in the Arches Court, each of whom should have power and privilege to take clerks apprentices, and that the remaining proctors should be esteemed and called supernumeraries, who should not have power to take such clerks until they should have succeeded into the number of the thirty-four; and that no proctor should take any clerk apprentice until he should have continued *exercent* in the Arches Court

five years; that the term of service of a clerk should be seven years, and that no proctor having one such clerk should be capable of taking another at the same time, until the first should have served five years. It is in practice required that a proctor shall have been five years on the list of the thirty-four seniors before being allowed to take an articulated clerk. There are two rules observed with respect to the qualification of articulated clerks which are not contained in the annexed statute; one, by which the age of the clerk is required to be fourteen, and not above eighteen years; and the other, that such clerk should not have been a stipendiary writing-clerk. The above rule with respect to age has, under particular circumstances, been occasionally dispensed with by the judge. The date of and authority for these two rules are not known. [BARRISTER.]

The ordinances and decrees of Sir Richard Raines, Judge of the Prerogative Court, mentioned in the statute, as made in 1686, do not appear to have been registered. It is conceived that they must have been rules and regulations to be observed in the conduct of suits, and not to the articling of clerks on admission of proctors, which acts are done only before the Official Principal of the Arches Court, or his surrogate, and are registered in the Arches Court. (*Parliamentary Paper*, 327, Sess. 1844.)

In the session of 1844 a bill was brought into the House of Commons "For facilitating Appeals to the Court of Arches." The preamble stated that it "would tend to the saving of expense, and to the better administration of justice, if either litigant party in any contested suit in any Ecclesiastical Court, either in the province of Canterbury or in the province of York, had the right to remove such suit into the Arches Court of Canterbury." § 1 provided that all persons may (if they think fit) commence a suit in the Court of Arches, and that the Court of Arches shall have as full power and jurisdiction to proceed in and adjudicate upon such suit, and to decree final or interlocutory sentence, as if such suit had come before the Court of Arches by letters of request. § 4 provided that pro-

cess of the Court of Arches should extend to England and Wales; and § 5, that the Dean of Arches might order examination to be taken in India and the Colonies, as in 1 Geo. IV. c. 101. This bill, however, was not carried.

ARCHIVE, or ARCHIVES, a chamber or apartment where the public papers or records of a state or community are deposited: sometimes, by a common figure, applied to the papers themselves.

The word archive is ultimately derived from the Greek *Ἀρχεῖον* (*Archeion*). The Greek word *archeion* seems, in its primary signification, to mean "a council-house, or state-house," or "a body of public functionaries," as the Ephori at Sparta. (Aristotle, *Politie*. ii. 9; and Pausanias, iii. 11.) Others derive the word Archive from *arca*, "a chest," such being in early times a usual depository for records. So Isidorus, *Orig.* lib. xx. c. 9—"Archa dicta, quod arceat visum atque prohibeat. Hinc et archivum, hinc et arcanum, id est secretum, unde cæteri arcentur." "It is called Archa, because it does not allow (*arc*-eat) us to see what is in it. Hence also Archivum and Arcanum, that is, a thing kept secret, from which people are excluded (*arc*-entur)." This explanation is manifestly false and absurd.

The Greek word *Archeion* was introduced into the Latin language, to signify a place in which public instruments were deposited (*Dig.* 48, tit. 19, s. 9). The word *Archiva*, from which the French and English Archives is derived, is used by Tertullian (*Facciol. Lexic.* 'Archium et Archivum'); thus he speaks of the "Romana Archiva." The Latin word for *Archeium* is *Tabularium*.

Among the Romans, archives, in the sense of public documents (*tabulæ publicæ*), were deposited in temples. These documents were—leges, senatusconsulta, *tabulæ censoriæ*, registers of births and deaths, and other like matters. Registers of this kind were kept in the temples of the Nymphs, of Lucina, and others; but more particularly that of Saturn, in which also the public treasury was kept.

Among the early Christians churches were used for the same purposes. In England registers of births, deaths, and marriages were till recently (1837) kept

in the parish churches, and were generally admissible as evidence of the facts to which they relate, though not originally intended for that purpose. Partial attempts at registration were made by the Dissenters, such as the registration of births kept at Dr. Williams' Library, Redcross-street. One-half of the parish registers anterior to A.D. 1600 had been lost at the period when the act for the registration of births, marriages, and deaths came into operation. By § 8 of this statute a register-office is required to be provided and upheld in each poor-law union in England and Wales, for the custody of the registers; and §§ 2 and 5 establish a central office in London. [REGISTRATION OF BIRTHS, &c.]

By § 65 of the Municipal Corporations Act (5 Wm. IV. c. 76) the custody of charters, deeds, muniments, and records of every borough shall be kept in such place as the council shall direct; and the town-clerk shall have the charge and custody of and be responsible for them.

Justinian's legislation made public documents judicial evidence. It is said that Charlemagne ordered the establishment of places for the custody of public documents. The church has usually been most careful in the preservation of all its papers, and accordingly such papers are the oldest that have been preserved in modern times. The importance of carefully preserving all documents that relate to transactions which affect the interests of the state and its component members is obvious; and next to the preservation of such documents, the most important thing is to arrange them well, and render them accessible, under proper regulations, to all persons who have occasion to use them. What has been done in this way in Germany is stated in the article 'Archive,' in the *Staats-Lexicon* of Rotteck and Welcker.

In England the word Archives is not used to indicate public documents. Such documents are called Charters, Muniments, Records, and State-papers. [RECORDS.]

AREOPAGUS, COUNCIL OF, a council so called from the hill of that name, on which its sessions were held; it was also called the council above (*ἡ ἄνω βουλή*), to distinguish it from the Council

of Five Hundred, whose place of meeting was in a lower part of Athens, called the Ceramicus. Its high antiquity may be inferred from the legends respecting the causes brought before it in the mythical age of Greece, among which is that of Orestes, who was tried for the murder of his mother (*Æschylus, Eumen.*); but its authentic history commences with the age of Solon. There is indeed as early as the first Messenian war something like historical notice of its great fame, in the shape of a tradition preserved by Pausanias (iv. 51), that the Messenians were willing to commit the decision of a dispute between them and the Lacedæmonians, involving a case of murder, to the Areopagus. We are told that it was not mentioned by name in the laws of Draco, though its existence in his time, as a court of justice, can be distinctly proved. (Plutarch, *Sol.* c. 19.) It seems that the name of the Areopagites was lost in that of the Ephetæ, who were then the appointed judges of all cases of homicide, as well in the court of Areopagus as in the other criminal courts. (Müller, *History of the Dorians*, vol. i. p. 352, English translation.) Solon, however, so completely reformed its constitution, that he received from many, or, as Plutarch says, from most authors, the title of its founder. It is therefore of the council of Areopagus, as constituted by Solon, that we shall first speak; and the subject possesses some interest from the light which it throws on the views and character of Solon as a legislator. It was composed of the archons of the year and of those who had borne the office of archon. The latter became members for life; but before their admission they were subjected, at the expiration of their annual magistracy, to a rigid scrutiny into their conduct in office and their morals in private life. Proof of criminal or unbecoming conduct was sufficient to exclude them in the first instance, and to expel them after admission. Various accounts are given of the number to which the Areopagites were limited. If there was any fixed number, it is plain that admission to the council was not a necessary consequence of honourable discharge from the scrutiny. But it is more probable that the accounts which

limit the number are applicable only to an earlier period of its existence. (See the anonymous argument to the oration of Demosthenes against Androction.) It may be proper to observe, that modern histories of this council do not commonly give the actual archons a seat in it. They are, however, placed there by Lysias the orator (*Areop.* p. 110, 16-20), and there is no reason to think that in this respect any change had been made in its constitution after the time of Solon. To the council thus constituted Solon intrusted a mixed jurisdiction and authority of great extent, judicial, political, and censorial. As a court of justice, it had direct cognizance of the more serious crimes, such as murder and arson. It exercised a certain control over the ordinary courts, and was the guardian generally of the laws and religion. It interfered, at least on some occasions, with the immediate administration of the government, and at all times inspected the conduct of the public functionaries. But, in the exercise of its duties as public censor for the preservation of order and decency, it was armed with inquisitorial powers to an almost unlimited extent.

It should be observed, that in the time of Solon, and by his regulations, the archons were chosen from the highest of the four classes into which he had divided the citizens. Of the archons so chosen, the council of Areopagus was formed. Here, then, was a permanent body, which possessed a general control over the state, composed of men of the highest rank, and doubtless in considerable proportion of Eupatridæ, or nobles by blood. The strength of the democracy lay in the *ecclesia*, or popular assembly, and in the ordinary courts of justice, of which the *dikasts*, or jurors, were taken indiscriminately from the general body of the citizens; and the council of Areopagus exercised authority directly or indirectly over both. The tendency of this institution to be a check on the popular part of that mixed government given by Solon to the Athenians, is noticed by Aristotle (*Polit.* ii. 9, and v. 3, ed. Schneid.). He speaks indeed of the council as being one of those institutions which Solon found and suffered to remain: but he can hardly

mean to deny what all authority proves, that in the shape in which it existed from the time of the legislator, it was his institution.

The council, from its restoration by Solon to the time of Pericles, seems to have remained untouched by any direct interference with its constitution. But during that interval two important changes were introduced in the general constitution of the state, which must have had some influence on the composition of the council, though we may not be able to trace their effects. The election of the chief magistrates by suffrage was exchanged for appointment by lot, and the highest offices of state were thrown open to the whole body of the people. But about the year B.C. 459, Pericles attacked the council itself, which never recovered from the blow which he inflicted upon it. All ancient authors agree in saying that a man called Ephialtes was his instrument in proposing the law by which his purpose was effected, but unfortunately we have no detailed account of his proceedings. Aristotle and Diodorus state generally that he abridged the authority of the council, and broke its power. (Aristotle, *Polit.* ii. 9; Diodorus, xi. 77.) Plutarch, who has told us more than others (*Cim.* c. 15; *Pericl.* c. 7), says only that he removed from its cognizance the greater part of those causes which had previously come before it in its judicial character, and that, by transferring the control over the ordinary courts of law immediately to the people, he subjected the state to an unmixed democracy. Little more than this can now be told, save from conjecture, in which modern compilers have rather liberally indulged. Among the causes withdrawn from its cognizance those of murder were not included; for Demosthenes states (*Contr. Aristocr.* p. 641-42), that none of the many revolutions which had occurred before his day had ventured to touch this part of its criminal jurisdiction. There is no reason to believe that it ever possessed, in matters of religion, such extensive authority as some have attributed to it, and there is at least no evidence that it lost at this time any portion of that which it had previously exercised. Lysias observes

(*Areop.* p. 110, 46), that it was in his time charged especially with the preservation of the sacred olive-trees; and we are told elsewhere that it was the scourge of impiety. It possessed, also, long after the time of Pericles, in some measure at least the powers of the censorship. (Athenæus, 4, 64, ed. Dindorf.)

Pericles was struggling for power by the favour of the people, and it was his policy to relieve the democracy from the pressure of an adverse influence. By increasing the business of the popular courts, he at once conciliated his friends and strengthened their hands. The council possessed originally some authority in matters of finance, and the appropriation of the revenue; though Mr. Mitford and others, in saying that it controlled all issues from the public treasury, say perhaps more than they can prove. In later times the popular assembly reserved the full control of the revenue exclusively to itself, and the administration of it was committed to the popular council, the senate of five hundred. It seems that, at first, the Areopagites were invested with an irresponsible authority. Afterwards they were obliged, with all other public functionaries, to render an account of their administration to the people. (Æschines, *Contr. Ctes.* p. 56, 30.) Both these changes may, with some probability, be attributed to Pericles. After all, the council was allowed to retain a large portion of its former dignity and very extensive powers. The change operated by Pericles seems to have consisted principally in this: that, from having exercised independent and paramount authority, it was made subordinate to the ecclesia. The power which it continued to possess was delegated by the people, but it was bestowed in ample measure. Whatever may have been the effect of this change on the fortunes of the republic, it is probable that too much importance has been commonly attached to the agency of Pericles. He seems only to have accelerated what the irresistible course of things must soon have accomplished. It may be true that the unsteady course of the popular assembly required some check, which the democracy in its unmitigated form could not supply, but the existence



of an independent body in the state, such as the council of Areopagus as constituted by Solon, seems hardly to be consistent with the secure enjoyment of popular rights and public liberty; which the Athenian people, by their naval services in the Persian war, and the consequences of their success, had earned the right to possess and the power to obtain. It ought not, however, to be concluded that institutions unsuitable to an altered state of things were unskillfully framed by Solon, or that he surrounded the infancy of a free constitution with more restrictions than were necessary for its security. He may still deserve the reputation which he has gained of having laid the foundation of popular government at Athens.

With respect to the censorship, we can show, by a few instances of the mode in which it acted, that it could have been effectually operative only in a state of society from which the Athenians were fast emerging before the time of Pericles. The Areopagites paid domiciliary visits, for the purpose of checking extravagant housekeeping. (Athenæus, 6, 46.) They called on any citizen at their discretion to account for the employment of his time. (Plutarch, *Sol.* c. 23.) They summoned before their awful tribunal, and condemned, a boy for poking out the eyes of a quail. (Quintilian, *Instit. Orator.* 5, 9. 13.) They fixed a mark of disgrace on a man who had dined in a tavern. (Athenæus, 13, 21.) Athens, in the prosperity which she enjoyed during the last fifty years before the Peloponnesian war, might have tolerated the existence, but certainly not the general activity of such an inquisition.

It appears from the language of contemporary writers, that while there were any remains of public spirit and virtue in Athens the council was regarded with respect, appealed to with deference, and employed on the most important occasions. (Lysias, *Contr. Theomnest.* p. 117, 12; *De Evandr.* p. 176, 17; *Andoc.* p. 11, 32; Demosthenes, *Contr. Aristocr.* p. 641-2.) In the time of Isocrates, when the scrutiny had ceased or become a dead letter, and profligacy of life was no bar to admission into the council, its moral influence was still such as to be an effectual restraint on the conduct of its own

members. (Isocrates, *Areop.* p. 147.) In the corruption of manners and utter degradation of character which prevailed at Athens, after it fell under the domination of Macedonia, we are not surprised to find that the council partook of the character of the times, and that an Areopagite might be a mark for the finger of scorn. (Athenæus, 4, 64.) Under the Romans it retained at least some formal authority, and Cicero applied for and obtained a decree of the council, requesting Cratippus, the philosopher, to sojourn at Athens and instruct the youth. (Plutarch, *Cic.* c. 24.) It long after remained in existence, but the old qualifications for admission were neglected in the days of its degeneracy, nor is it easy to say what were substituted for them. Later times saw even a stranger to Athens among the Areopagites.

We shall conclude this article with a few words on the forms observed by the council in its proceedings as a court of justice in criminal cases. The court was held in an uninclosed space on the Areopagus, and in the open air; which custom, indeed, it had in common with all other courts in cases of murder, if we may trust the oration (*De Cæde Herodis*, p. 130) attributed to Antiphon. The Areopagites were in later times, according to Vitruvius, accommodated with the shelter of a roof. The prosecutor and defendant stood on two separate rude blocks of stone, and, before the pleadings commenced, were required each to take an oath with circumstances of peculiar solemnity: the former, that he charged the accused party justly; the defendant, that he was innocent of the charge. At a certain stage of the proceedings, the latter was allowed to withdraw his plea, with the penalty of banishment from his country. (Demosthenes, *Contr. Aristocr.* p. 642-3.) In their speeches both parties were restricted to a simple statement, and dry argument on the merits of the case, to the exclusion of all irrelevant matter, and of those various contrivances known under the general name of *paraskeue* (παράσκευη), to affect the passions of the judges, so shamelessly allowed and practised in the other courts. (Or. Lycurg. p. 149, 12-25; Lucian, *Gymn.* c. 19.) Of the existence

of the rule in question in this court, we have a remarkable proof in an apology of Lysias for an artful violation of it in his Areopagitic oration (p. 112, 5). Advocates were allowed, at least in later times, to both parties. Many commentators on the New Testament have placed St. Paul as a defendant at the bar of the Areopagus, on the strength of a passage in the Acts of the Apostles (xvii. 19). The apostle was indeed taken by the inquisitive Athenians to the hill, and there required to expound and defend his new doctrines for the entertainment of his auditors; but in the narrative of Luke there is no hint of an arraignment and trial.

Some of our readers may perhaps be surprised that we have made no mention of a practice so often quoted as peculiar to the Areopagites, that of holding their sessions in the darkness of night. The truth is, that we are not persuaded of the fact. It is, indeed, noticed more than once by Lucian, and perhaps by some other of the later writers; but it is not supported, we believe, by any sufficient authority, whilst there is strong presumptive evidence against the common opinion. It was, as it should seem, no unusual pastime with the Athenians to attend the trials on the Areopagus as spectators. (Lysias, *Contr. Theomn.* p. 117, 10.) We suspect that few of this light-hearted people would have gone at an unseasonable hour in the dark to hear such speeches as were there delivered, and see nothing. Perhaps there may be no better foundation for the story than there is for the notion, till lately so generally entertained, that the same gloomy custom was in use with the celebrated Vehmic tribunal of Westphalia.

ARISTOCRACY, from the Greek *aristocrátia* (ἀριστοκρατία), according to its etymology, means a government of the *best* or *most excellent* (ἀριστοί). This name, which, like *optimates* in Latin, was applied to the educated and wealthy class in the state, soon lost its moral and obtained a purely political sense: so that aristocracy came to mean merely a government of a *few*, the rich being always the minority of a nation. When the sovereign power does not belong to one

person, it is shared by a number of persons either greater or less than half the community: if this number is less than half, the government is called an *aristocracy*, if it is greater than half, the government is called a *democracy*. Since, however, women and children have in all ages and countries (except in cases of hereditary succession) been excluded from the exercise of the sovereign power, the number of persons enumerated in estimating the form of the government is confined to the adult males, and does not comprehend every individual of the society, like a census of population. Thus, if a nation contains 2,000,000 souls, of which 500,000 are adult males, if the sovereign power is lodged in a body consisting of 500 or 600 persons, the government is an aristocracy: if it is lodged in a body consisting of 400,000 persons, the government is a democracy, though this number is considerably less than half the entire population. It is also to be remarked, that where there is a class of subjects or slaves who are excluded from all political rights and all share in the sovereignty, the numbers of the dominant community are alone taken into the account in determining the name we are to give to the form of the government. Thus, Athens at the time of the Peloponnesian war had conquered a number of independent communities in the islands of the Ægean Sea and on the coasts of Asia Minor and Thrace, which were reduced to different degrees of subjection, but were all substantially dependent on the Athenians. Nevertheless, as every adult male Athenian citizen had a share in the sovereign power, the government of Athens was called not an aristocracy, but a democracy. Again, the Athenians had a class of slaves four or five times more numerous than the whole body of citizens of all ages and sexes; yet as a majority of the citizens possessed the sovereign power, the government was called a democracy. In like manner, the government of South Carolina in the United States of America is called a democracy, because every adult freeman, who is a native or has obtained the rights of citizenship by residence, has a vote in the election of members of the

legislative assembly, although the number of the slaves in that state exceeds that of the free population.

An *Aristocracy*, therefore, may be defined to be a form of government in which the sovereign power is divided among a number of persons less than half the adult males of the *entire* community where there is not a class of subjects or slaves, or the *dominant* community where there is a class of subjects or slaves.

Sometimes the word aristocracy is used to signify not a form of government, but a class of persons in a state. In this sense it is applied not merely to the persons composing the sovereign body in a state of which the government is aristocratical, but to a class or political party in any state, whatever be the form of its government. When there is a privileged order of persons in a community having a title or civil dignity, and when no person, not belonging to this body, is admitted to share in the sovereign power, this class is often called the aristocracy, and the aristocratic party or class; and all persons not belonging to it are called the popular party, or, for shortness, the people. Under these circumstances many rich persons would not belong to the aristocratic class; but if a change takes place in the constitution of the state, by which the disabilities of the popular order are removed, and the rich obtain a large share of the sovereign power, then the rich become the aristocratic class, as opposed to the middle ranks and the poor. This may be illustrated by the history of Florence, in which state the *nobili popolani*, or popular nobles (as they were called), at one time were opposed to the aristocratic party, but by a change in the constitution became themselves the chiefs of the aristocratic, and the enemies of the popular party. In England, at the present time, aristocracy, as the name of a class, is generally applied to the *rich*, as opposed to the rest of the community: sometimes, however, it is used in a narrower sense, and is restricted to the *nobility*, or members of the peerage.

The word *aristocracy*, when used in this last sense, may be applied to an order of persons in states of any form of government. Thus, the privileged orders in

France from the reign of Louis XIV. to the revolution of 1789, have often been called the aristocracy, although the government was during that time purely monarchical; so a class of persons has by many historians been termed the aristocracy in aristocratical republics, as Venice, and Rome before the admission of the plebeians to equal political rights: and in democratical republics, as Athens, Rome in later times, and France during a part of her revolution. It would therefore be an error if any person were to infer from the existence of an aristocracy (that is, an aristocratical class) in a state, that the form of government is therefore aristocratical, though in fact that might happen to be the case.

The use of the word *aristocracy* to signify a *class of persons* never occurs in the Greek writers, with whom it originated, nor (as far as we are aware) is it ever employed by Machiavelli and the revivers of political science since the middle ages: among modern writers of all parts of Europe this acceptance has, however, now become frequent and established.

There is scarcely any political term which has a more vague and fluctuating sense than *aristocracy*; and the historical or political student should be careful to watch with attention the variations in its meaning: observing, first, whether it means a form of government or a class of persons: if it means a form of government, whether the whole community is included, or whether there is also a class of subjects or slaves: if it means a class of persons, what is the principle which makes them a political party, or on what ground they are jointly opposed to other orders in the state. If attention is not paid to these points, there is great danger, in political or historical discussions, of confounding things essentially different, and of drawing parallels between governments, parties, and states of society, which resemble each other only in being called by the same name.

It has been lately proposed by Mr. Austin, in his work on 'The Province of Jurisprudence,' to use the term *aristocracy* as a general name for governments in which the sovereignty belongs to several persons, that is, to all governments which

are not monarchies. There would, however, be much inconvenience in deviating so widely from the established usage of words, as to make democracy a kind of aristocracy; and it appears that the word republic has properly the sense required, being a general term including both aristocracy and democracy, and signifying all governments which are not monarchies or despotisms. (*Journal of Education*, Part viii. p. 299; and REPUBLIC and DEMOCRACY.)

ARMIGER. [ESQUIRE.]

ARMORIAL BEARINGS. [HERALDRY.]

ARMY. The word *army*, like many other military terms, has come to us from the French. They write it *armée*, "the armed," the "men in arms," which is precisely what the English word *army* means. An army is ill defined by Locke to be a collection of armed men obliged to obey one man. There are various definitions given by writers on the Law of Nations.

The word *army* is not used to designate a simple regiment or battalion, or any small body of armed men. An army is a large body of troops distributed in divisions and regiments, each under its own commander, and having officers of various descriptions to attend to all that is necessary to make the troops effective when in action. The whole body is under the direction of some one commander, who is called the commander-in-chief, the general, and sometimes the generalissimo, that is, the chief among the generals.

The whole military force of a nation constitutes its army, and it is usual to estimate the comparative strength of nations by the number of well-appointed men which they are able to bring into the field. In another sense, an army is a detachment from the whole collected force; a number of regiments sent forth on a particular expedition under the command of some one person who is the general for that especial purpose. Instances of this latter sense of the word occur in the expressions "Army of Italy," "the Army of Spain," &c., as formed by Napoleon. Such a detachment may be a large or a small army; and should it return with its ranks greatly thinned and without many of its officers, it would still be an army, if the distribu-

tion into divisions and regiments remained, though actually consisting of not more than a single regiment with its full complement of men and officers. In this state it is sometimes not aptly called the skeleton of an army.

An army is the great instrument in the hands of the governments of modern Europe, by which, in the last extremity, they enforce obedience to the laws at home, and respect from other powers who show a disposition to do them wrong. When the efforts of the ministers of peace and justice at home are inadequate to enforce submission to the laws:—when the correspondence of cabinets and the conferences of ambassadors fail in composing disputes which arise among nations, the army is that power which is used to maintain order at home and rights abroad.

The legitimate purposes for which an army is maintained are essential to the well-being of a state, and every nation that has attained any high degree of civilization, has always maintained such a force, at least for protection and defence. But to have an army always appointed and always ready for the field can only be effected when the various other offices in a great community are properly distributed and filled. No better proof can be afforded of the high civilization of Egypt and other countries in early times than the well-appointed and powerful armies which they were able to bring into the field. This was effected in Egypt by having a particular caste or class of soldiers, corresponding pretty nearly to the Kshatriyas of India. (Herodotus, ii. 164, &c.) The armies of the Greeks, especially in the post-Alexandrine period, those of Carthage under the command of Hannibal, and the armies of Rome in the best days of the Republic and the Empire, were not inferior to any of modern times in numbers, appointments, discipline, or the military skill of their commanders. It is not, however, to them that we are to trace the origin or the history of our modern armies.

An army, meaning by that term a body of men distinct from the rest of the nation, constantly armed and disciplined, was unknown in the early periods of the English and the other modern European

nations. The whole male population was the army; that is, every person learned the use of arms, was ready to defend himself, his family, and his possessions; and in time of common danger, to go out to war under the command of some one chief chosen from among the heads of the tribes. Such were the vast armies which presented themselves from time to time on the Roman frontier, or contended against Cæsar when he was endeavouring to subjugate Gaul; and such was the power which, on so short a warning, was arrayed against him on the British coast under the command of Cassibelanus, when he made that descent from which neither honour accrued to the Roman arms nor benefit to the Roman state. In all these nations the warlike spirit was kept up by the sense of danger, not so much from foreign invaders, as from neighbouring and kindred tribes.

In the writings of Cæsar and Tacitus, the two authors from whom we derive our best acquaintance with the manners of the Germanic and the Western nations of Europe, we see the warlike character of those nations, and the principles on which their military affairs were conducted. A whole male population trained to arms; confederating in time of common danger under some one chief; with little defensive armour, and no offensive weapons except darts, spears, and arrows; throwing up occasionally earth-works to strengthen a position—this is the outline of their military proceedings. (Tacitus, *Annal.* ii. 14.) There is little peculiar in the military system of the ancient Britons; yet it must have been by long practice that their warriors attained that degree of skill which they showed at the time of Cæsar's invasion.

When Britain was reduced to the form of a Roman province, a regular army was introduced and permanently settled in the island, for the purpose of enforcing submission, and of defence against foreign invaders. Many of the remains of Roman authority in Britain, as roads, walls, encampments, and inscriptions, are military. In that curious relic of Roman time, the 'Notitia,' which is referred to the age of the Roman emperors Arcadius and Honorius, we have a particular account

of the distribution of the whole Roman army; and we see, in particular, how Britain was then divided for military purposes, and what were the fixed stations of particular portions of the Roman legions.

It was the policy of Rome, in the latter part of the Republic, and more particularly under the Empire, to recruit its legions from among the barbarous nations, but to employ such soldiers in countries to which they did not belong. Thus, in the inscriptions relating to military affairs which have been found in England, many tribes of Gaul, of Spain, and Portugal are named as those to which particular soldiers, or particular bodies of troops, belonged. And so in foreign inscriptions, the names of British tribes are sometimes found. The grounds of this policy are apparent. The military portion of these nations was thus drawn away. There remained only the quiet and the peaceable, or the females, the young, the infirm, and the aged. As long as the Roman army was sufficient for their protection, it was well. But when that army was withdrawn, we see, as in the case of Britain, that a people so weakened would easily fall a prey to nations which had never been subdued by the Roman arms; and we see also what was probably the true reason of the difference between the spirited resistance which was made to Cæsar on his two landings in Britain, and the clamorous complaint and feeble resistance with which the people of Britain met the Picts and the Saxons.

From this time we lose sight of any entire British population of the part of the island called England. The conquests made by the Saxons appear to have been complete, and their maxims of policy and war became the principles of English polity. They seem to have been at first in that state of society in which every man is a soldier; and the different sovereignties which they established were the occasion of innumerable contests. We have, however, little information on this subject; and even the supposed policy of Alfred, in the separation of a portion of the people for military affairs, in the form of a national militia, is a part of his history on which we have not any very satisfactory information.

We find, however, that the Saxon kings had powerful armies at their command; and the most probable account of the mode in which they were got together seems to be this:—the male population were exercised in military duties, under the inspection of the earls, and their deputies, the sheriffs, or vicecomites, in the manner of the arrays and musters of later times—being drawn out occasionally for the purpose, and being thus ready to form, at any time when their services were required, an efficient force.

We see from that curious remain of those times, a piece of needle-work representing the wars and death of Harold, that the Saxon soldiers were not those half-clothed and painted figures which had presented themselves on the shores of Britain when the Roman armies made their first descent. We see them clothed from head to foot in a close-fitting dress of mail. They have cavalry, but no chariots. The archers are all infantry. Both infantry and cavalry are armed with spears, to some of which little pennons are attached. Some have swords, and others carry bills or battle-axes. They have shields, the bosses on which are surrounded with flourishes and other ornaments; and there are sometimes other devices, but nothing which can be regarded as more than the very rudiments of those heraldic devices which were afterwards formed into a kind of system by the heralds who attended the armies, and by which the chiefs were distinguished from each other, when their persons were concealed by the armour. The piece of needle-work representing the wars of Harold is supposed to be the work of Matilda, the queen of William the Conqueror, and the ladies of her court. It is preserved in the cathedral of Bayeux, whence it is commonly called the Bayeux tapestry. One of the many valuable services rendered to historical literature by the Society of Antiquaries has been the publication of a series of coloured prints, in which we have, on a reduced scale, a perfectly accurate representation of this singular monument of ancient English and Norman manners.

A great change took place in the military system of England at the Conquest.

It is to that period that the introduction of fiefs is to be referred, a system which provided, among other things, for an army ever ready at the call of the sovereign lord. The king, reserving certain tracts as his own demesne, distributed the greater portion of England among his followers, to hold by military service that is, for every knight's fee, as they were called, the tenant was bound to find the king one soldier ready for the field, to serve him for forty days in each year. The extent of the knight's fee varied with the qualities and value of the soil. In the reign of Edward I. the annual value in money was 20*l*. The number of knights' fees is said by old writers to have been 60,060. The king had thus provision made for an army of 60,000 men, whom he could call at short notice into the field, subject them when there to all the regulations of military discipline, and keep them for forty days without pay, which was usually as long as their service would be required in the warfare in which the king was likely to be engaged. When their services were required for any longer time, they might continue on receiving pay.

Writs of military summons are found in great abundance in what are called the "Close Rolls," which contain copies of such letters as the king issues under seal. But this system, it is evident, had many inconveniences; and the kings of England had a better security for the protection of the realm against invasion, and for the maintenance of internal tranquillity, in that which seems to be a relic of Saxon polity. We allude to the liability of all persons to be called upon for military service within the realm; to the power which the constitution gave to the sheriff to call them out to exercise, in order that they might be in a condition to perform the duty when called upon; and to the obligation which a statute of Edward I. imposed on all persons to provide themselves with certain pieces of armour, which were changed for others by a statute of James I. We see in this system at once the practice of our remoter ancestors, and the beginning of that drafting of men to form the county militia, which is a part of the military polity of the country at present.

The sheriffs were the persons to whom the care of these affairs was committed; but it was the practice of the early kings to send down into the several shires, or to select from the gentry residing in them, persons whose duty it was to attend the musters or arrays, which were a species of review of these domestic troops, and who were intended, as it seems, to be a check upon the sheriffs in the discharge of this part of their duty. The persons thus employed were usually men experienced in military affairs; and when the practice became more general, there was a permanent officer appointed in each county, who had the superintendence of these operations, and was called the lieutenant: this is the origin of the present lord-lieutenant of counties, an officer who cannot be traced to a period earlier than the reign of Henry VIII.

Foreigners were also sometimes engaged to serve the king in his wars; but these were purely mercenary troops, and were paid out of the king's own revenues.

We see, then, that the early kings of England of the Norman and Plantagenet races had three distinct means to which they could have recourse when it was necessary to arm for the general defence of the realm: the quota of men which the holders of the knights' fees were bound to furnish; the posse-comitatûs, or whole population, from sixteen to sixty, of each shire, under the guidance of the sheriffs; and such hired troops as they might think proper to engage. But as the posse-comitatûs could not be compelled to leave the kingdom, and only in particular cases the shire to which they belonged, the king had only his feudal and mercenary troops at command when he carried an army to the continent, or when he had to wage war against even the Scotch or Welsh. We are not to suppose that troops so levied, especially when there were only contracted pecuniary resources for the hiring of disciplined troops of other nations, would have been sufficient to make head against the power of such a potentate as the king of France, and once to gain possession of that throne. And this leads us to another important part of the subject.

The mutual inconveniences attendant

on the nature of the military services due from those who held the feudal tenures of the crown disposed both parties to consent to frequent commutations. Money was rendered instead of service, and thus the crown acquired a revenue which was applicable to military purposes, and which was expended in the hire of native-born subjects to perform service in the king's armies in particular places and for particular terms. The king covenanted by indenture with various persons, chiefly those of most importance in the country, to serve him on certain money-terms with a certain number of followers, and in certain determinate expeditions. There appears little essential difference between this and the modern practice of recruiting armies. It was chiefly by troops thus collected that the victories of Creci, Poitiers, and Agincourt were gained.

In the office of the Clerk of the Pells in the Exchequer, Dugdale perused numerous indentures of this kind, and he has made great use of them in the history which he published of the Baronage of England. A few extracts from that work will show something of the nature of these engagements.

Michael Poynings, who was at the battle of Creci, entered into a contract with King Edward III. to serve him with fifteen men-at-arms, four knights, ten esquires, and twelve archers, having an allowance of twenty-one sacks of the king's wool for his and their wages. Three years after the battle of Creci, King Edward engaged Sir Thomas Ughtred to serve him in his wars beyond sea, with twenty men-at-arms and twenty archers on horseback, taking after the rate of 200*l.* per annum for his wages during the continuance of the war. In the second year of King Henry IV., Sir William Willoughby was retained to attend the king in his expedition into Scotland, with three knights besides himself, twenty-seven men-at-arms, and one hundred and sixty-nine archers, and to continue with him from June 20th to the 13th of September. When Henry V. had determined to lead an army into France, John Holland was retained to serve the king in his "voyage royal" into France for one whole year, with forty

men-at-arms and one hundred archers, whereof the third part were to be footmen, and to take shipping at Southampton on the 10th of May next following. In the 12th of Henry VII., John Grey was retained to serve the king in his wars in Scotland, under the command of Giles, Lord Daubeney, captain-general of the king's army for that expedition; with one lance, four demi-lances, and fifty bows and bills, for two hundred and ninety miles; with one lance, four demi-lances, and fifty bows and bills, for two hundred and sixty-six miles; and with two lances, eight demi-lances, and two hundred bows and bills, for two hundred miles. These were nearly half what is now the usual complement of a regiment.

Troops thus levied, together with foreign mercenaries, make the nearest approach that can be discovered in English history to a permanent, or, as it is technically called, a standing army. The king might, to the extent of his revenue, form an army of this description: but as to the other means of military defence or offence put into his hands, the persons engaged were only called into military service on temporary occasions, and soon fell back again into the condition of the citizen or agriculturist. But the king's power was necessarily limited by his revenue, and the maintenance of a permanent force appears to have been little regarded by our early kings, since, before the reign of King Henry VII. it does not appear that the kings had even a body-guard, much less any considerable number of troops accoutred and ready for immediate action at the call of the king. In modern times, Charles VII. of France (1423-1461) first introduced standing armies in Europe: this policy was gradually imitated by the other European states, and is now a matter of necessity and of self-defence. In England, probably in a great degree owing to her insular situation, this took place later than in most continental countries. Still the example of the continental states, a sense of the great convenience of having always a body of troops at command, and the change in the mode of warfare effected by the introduction of artillery, which brought military operations within

the range of science, and made them more than before matters which required much time and study in those who had to undertake the direction of any large body of men, led to the establishment of a permanent army, varying in numbers with the dangers and necessities of the time.

The few troops who formed the royal guard were the only permanent soldiers in England before the civil wars. The dispute between Charles I. and his parliament was about the command of the militia. Charles II. kept up about 5000 regular troops as guards, and to serve in the garrisons which then were established in England. These were paid out of the king's own revenue. James II. increased them to 30,000; but the measure was looked on with great jealousy, and the object was supposed to be the destruction of the liberties of Englishmen. In the Bill of Rights (1689) it was declared that the raising or keeping a standing army within the kingdom, in time of peace, unless it be with consent of parliament, is against law. An army varying in its numbers has ever since been maintained, and is now looked on without apprehension. It is raised by the authority of the king and paid by him: but there is an important constitutional check on this part of the royal prerogative in the necessity for acts of parliament to be passed yearly, in order to provide the pay and to maintain the discipline. [MUTINY ACT.]

#### ARMIES. [MILITARY FORCE.]

ARRAIGNMENT. This word is derived by Sir Matthew Hale from *arraisoner*, *ad rationem ponere*, to call to account or answer, which, in ancient law French, would be *ad-resoner*, or, abbreviated, *ar-esner*. Conformably to this etymology, arraignment means nothing more than calling a person accused to the bar of a court of criminal judicature to answer formally to a charge made against him. The whole proceeding at present consists in calling upon the prisoner by his name, reading over to him the indictment upon which he is charged, and demanding of him whether he is guilty or not guilty. Until very lately, if the person accused pleaded that he was not guilty, he was asked how he would be tried; to which



question the usual answer was, "By God and my country." But by a late statute (7 & 8 Geo. IV. c. 28, sec. 1) this form was abolished; and it was enacted, that "if any person, not having privilege of peerage, being arraigned upon an indictment for treason, felony, or piracy, shall plead 'Not guilty,' he shall, without any further form, be deemed to have put himself upon the country for trial, and the court shall, in the usual manner, order a jury for the trial of such person accordingly."

The arraignment of a prisoner is founded upon the plain principle of justice, that an accused person should be called upon for his answer to a charge before he is tried or punished for it. That this was a necessary form in English criminal law at a very early period appears from the reversal in parliament of the judgment given against the Mortimers in the reign of Edward II., which Sir Matthew Hale calls an "excellent record." One of the errors assigned in that judgment, and upon which its reversal was founded, was as follows:—"That if in this realm any subject of the king hath offended against the king or any other person, by reason of which offence he may lose life or limb, and be thereupon brought before the justices for judgment, he ought to be called to account (*poni rationi*), and his answers to the charge to be heard before proceeding to judgment against him; whereas in this record and proceedings it is contained that the prisoners were adjudged to be drawn and hanged, without having been arraigned (*arrenati*) thereupon, or having an opportunity of answering to the charges made against them, contrary to the law and custom of this realm." (Hale's *Pleas of the Crown*, book ii. c. 28.)

The ceremony of the prisoner holding up his hand upon arraignment is merely adopted for the purpose of pointing out to the court the person who is called upon to plead. As it is usual to place several prisoners at the bar at the same time, it is obviously a convenient mode of directing the eyes of the court to the individual who is addressed by the officer. In the case of Lord Stafford, who was tried for high treason in 1680, on the charge of

being concerned in the Popish plot, the prisoner objected, in arrest of judgment, that he had not been called on to hold up his hand on his arraignment; but the judges declared the omission of this form to be no objection to the validity of the trial. (Howell's *State Trials*, vol. vii. p. 1555.)

#### ARREST, PERSONAL. [DEBT.]

ARRESTMENT in the law of Scotland is a process by which a creditor may attach money or moveable property which a third party holds for behoof of his debtor. It bears a general resemblance to foreign attachment by the custom of London. [ATTACHMENT.] The person who uses it is called the arrestor; he in whose hands it is used is called the arrestee, and the debtor is called the common debtor. It is of two kinds, arrestment in execution and arrestment in security. The former can proceed only on the decree of a court, on a deed which contains a clause of registration for execution, or on one of those documents, such as bills of exchange and promissory notes, which by the practice of Scotland are placed in the same position as deeds having a clause of registration. Arrestment in security is generally an incidental procedure in an action for the constitution of a debt; but it may be obtained from the Bill Chamber of the Court of Session on cause shown, as a method of constituting a security for a debt not yet due. This latter class of arrestments is under the equitable control of the judge who issues it; and it is a general principle that it cannot be obtained unless the claimant show that circumstances have occurred which have a tendency to make his chance of payment less than it was at the time when he entered into the engagement with his debtor. An arrestment may be recalled on it being shown that it should not have been issued, and an arrestment in security may be "loosed" on the debtor finding security for the payment of his debt. An arrestment in execution expires on the lapse of three years from the date of its execution, and an arrestment in security, on the lapse of three years from the day when the debt becomes due. In the meantime, the person in whose hands the process is used, is liable in damages if he part with the property

arrested, but it cannot be attached after he has parted with it, in the hands of a *bonâ-fide* holder. The arrestment is made effectual for the payment of the debt by an action of Forthcoming, in which the common debtor is cited. It concludes for payment of the money if the arrestment be laid on money, or for their sale for behoof of the creditor if it be laid on other moveable goods. The arrestee may plead against the arrestor whatever defence he might have had against the common debtor. The authority of the local courts was enlarged in regard to arrestments, and the process was generally regulated, by the 1 & 2 Vict. c. 114. The practice on this subject will be found in Darling's 'Powers and Duties of Messengers-at-Arms.'

ARSON. [MALICIOUS INJURIES.]

ARTICLES OF WAR. [MUTINY ACT.]

ASSENT, ROYAL. When a bill has passed through all its stages in both houses of parliament, if it is a money bill, it is sent back to the charge of the officers of the House of Commons, in which it had of course originated; but if not a bill of supply, it remains in the custody of the clerk of the enrolments in the House of Lords. The royal assent is always given in the House of Lords, the Commons, however, being also present at the bar, to which they are summoned by the Black Rod. The king may either be present in person, or may signify his assent by letters patent under the great seal, signed with his hand, and communicated to the two houses by commissioners. Power to do this is given by 33 Henry VIII. chap. 21. The commissioners are usually three or four of the great officers of state. They take their seats, attired in a peculiar costume, on a bench placed between the woosack and the throne. When the king comes in person, the clerk assistant of the parliament waits upon his Majesty in the robing-room before he enters the house, reads a list of the bills, and receives his commands upon them. During the progress of a session, the royal assent is usually given by a commission under the great seal issued for that purpose. In strict compliance with 33 Henry VIII.

c. 21, the commission is "by the king himself signed with his own hand," and attested by the clerk of the crown in Chancery. During the last illness of George IV. an act was passed to appoint one or more person or persons, or any one of them, to affix in the king's presence, and by his Majesty's command given by word of mouth, his Majesty's signature by means of a stamp. When the king comes down in person, he is seated on the throne, robed and crowned. The royal assent is rarely given in person, except at the end of a session; but bills for making provision for the honour and dignity of the crown, such as settling the bills for the civil lists, have generally been assented to by the king in person immediately after they have passed both houses. When the bill for supporting the dignity of Queen Adelaide received the royal assent in the usual form, in August, 1836, she was present, attended by one of the ladies of the bed-chamber and her maids of honour, and sat in a chair placed on a platform raised for that purpose. After the royal assent was pronounced, the queen stood up and made three curtesies, one to the king, one to the lords, and one to the commons. The bills that have been left in the House of Lords lie on the table; the bills of supply are brought up from the Commons by the Speaker, who, in presenting them, especially at the end of a session, is accustomed to accompany the act with a short speech. In these addresses it is usual to recommend that the money which has been so liberally supplied by his Majesty's faithful Commons should be judiciously and economically expended; and a considerable sensation has been sometimes made by the emphasis and solemnity with which this advice has been enforced upon the royal ear. The royal assent to each bill is announced by the clerk of the parliaments. "When her Majesty gives her assent to bills in person, the clerk of the crown reads the titles, and the clerk of the parliament makes an obeisance to the throne, and then signifies her Majesty's assent. A gentle inclination, indicative of assent, is given by her Majesty, who has already given her commands to the clerk assistant." (May's *Law, &c. of Parliament.*)

After the title of the bills is read by the clerk of the crown, the clerk of the parliament says, if it is a bill of supply, which receives the royal assent before all other bills, "*Le roi (or la reine) remercie ses bons sujets, accepte leur benevolence, et ainsi le veut;*" if any other public bill, "*Le roi le veut;*" if a private bill, "*Soit fait comme il est désiré;*" In an act of grace or pardon, which has the royal assent before it is laid before parliament, where it is only read once in each house, and where, although it may be rejected, it cannot be amended, there is no further expression of the royal assent, but, having read its title, the clerk of the parliament says, "*Les Prelats, Seigneurs, et Communes, en ce present parliament assemblees, au nom de tous vos autres sujets, remercient très humblement vostre majesté, et prient à Dieu vous donner en sante bonne vie et longue.*"

When the royal assent is refused to a bill, the form of announcement is *Le roi s'aviserá*. It is probable that in former times these words were intended to mean what they express, namely, that the king would take the matter into consideration, and merely postponed his decision for the present; but the necessity of refusing a bill is removed by the constitutional principle that the crown has no will except that of its ministers, who only retain their situations so long as they enjoy the confidence of parliament. There has been no instance of the rejection by the crown of any bill, certainly not of any public bill, which had passed through parliament, for many years. It is commonly stated, even in books of good authority (for instance, in Chitty's edition of Blackstone), that the last instance was the rejection of the bill for triennial parliaments by William III. in 1693. Tindal, in his continuation of Rapin, says, "The king let the bill lie on the table for some time, so that men's eyes and expectations were much fixed on the issue of it; but in conclusion he refused to pass it, so the session ended in an ill humour. The rejecting a bill, though an unquestionable right of the crown, has been so seldom practised, that the two houses are apt to think it a

hardship when there is a bill denied." But another instance occurred towards the close of the same year, which was more remarkable, in consequence of its being followed by certain proceedings in parliament, which was sitting at the time. This was the rejection of the bill commonly called the Place Bill, the object of which was to exclude all holders of offices of trust and profit under the crown from the House of Commons. It was presented to the king along with the Land-tax Bill; and the day after he had assented to the one and rejected the other, the House of Commons, having resolved itself into a grand committee on the state of the nation, passed the following resolution:—"That whoever advised the king not to give the royal assent to the act which was to redress a grievance, and take off a scandal upon the proceedings of the Commons in parliament, is an enemy to their majesties and the kingdom; and that a representation be made to the king, to lay before him how few instances have been in former reigns of denying the royal assent to bills for redress of grievances; and the grief of the Commons for his not having given the royal assent to several public bills, and in particular to this bill, which tends so much to the clearing the reputation of this house, after their having so freely voted to supply the public occasions." An address conformable to the resolution was accordingly presented to his Majesty by the whole house. The king returned a polite answer to so much of the address as referred to the confidence that ought to be preserved between himself and the parliament, but took no notice of what was said about the rejection of the bill. When the Commons returned from the royal presence, it was moved in the house "That application be made to his Majesty for a further answer;" but the motion was negatived by a majority of 229 to 28.

Mr. Hatsell, in the second volume of his Precedents (edition of 1818), quotes other instances of subsequent date to this. The latest which he discovered was the rejection of a Scotch militia bill by Queen Anne in 1707; and this is also the latest mentioned in Mr. May's recent work. In former times the refusal of the royal

assent was a common occurrence. Queen Elizabeth once at the end of a session, out of ninety-one bills which were presented to her, rejected forty-eight.

It is the royal assent which makes a bill an act of parliament, and gives it the force of a law. As by a legal fiction the laws passed throughout a whole session of parliament are considered as forming properly only one statute (of which what are popularly called the separate acts are only so many chapters), it used to be a matter of doubt whether the royal assent, at whatever period of the session it might be given, did not make the act operative from the beginning of the session, when no day was particularly mentioned in the body of it as that on which it should come into effect. In order to settle this point, it was ordered by 33 George III. c. 13, that the clerk of parliament should for the future endorse on every bill the day on which it received the royal assent, and that from that day, if there was not in it any specification to the contrary, its operation should commence.

It appears that the several forms of words now in use are not, as has been sometimes stated, exactly the same that have been employed in this ceremony from the first institution of parliaments. For instance, it is recorded that Henry VII. gave his assent to the bill of attainder passed in the first year of his reign (1485) against the partisans of Richard III. in the more emphatic terms, *Le roy le voet, en toutz pointz*. On some occasions, of earlier date, the assent is stated to have been given in English. Thus, to a bill of attainder passed against Sir William Oldhall in 1453 (the 31st of Henry VI.), the clerk is recorded in the Rolls of Parliament to have announced his Majesty's assent as follows: "The king volle that it be hadde and doon in maner and forme as it is desired." And in 1459, in the case of an act of attainder against the Duke of York, the Earls of Salisbury, Warwick, and others, the same king gave his assent in the following form:—"The king agreeth to this act, so that by virtue thereof he be not put from his prerogative to show such mercy and grace as shall please his highness, accord-

ing to his regalie and dignitie, to any person or persons whose names be expressed in this act, or to any other that might be hurt by the same."

In the time of the Commonwealth, an English form was substituted for those in Norman-French, which had been previously and are now in use. On the 1st of October, 1656, the House of Commons resolved "that when the Lord Protector shall pass a bill, the form of words to be used shall be these, *The Lord Protector doth consent*." In 1706, also, a bill passed the House of Lords, and was read a second time in the House of Commons, for abolishing the use of the French tongue in all proceedings in parliament and courts of justice, in which it was directed, "that instead of *Le roy le veult*, these words be used, *The king answers Be it so*; instead of *Soit fait comme il est desirée*, these words be substituted, *Be it as is prayed*; where these words, *Le roi remercie ses bons sujets, accepte leur benevolence, et ainsi le veult*, have been used, it shall hereafter be, *The king thanks his good subjects, accepts their benevolence, and answers Be it so*; instead of *Le roi s'avisera*, these words, *The king will consider of it*, be used." "Why this bill was rejected by the Commons," says Hatsell, "or why its provisions with respect to proceedings in parliament were not adopted in an act which afterwards passed in the year 1731, 'That all proceedings in courts of justice should be in English,' I never heard any reason assigned." For further information on this subject, see Hatsell's *Precedents*, especially vol. ii. pp. 338-351 (edition of 1818); also May's *Treatise upon the Law, Privileges, Proceedings, and Usage of Parliament*, 1844.

ASSEMBLY, GENERAL, OF SCOTLAND. [GENERAL ASSEMBLY.]

ASSEMBLY, NATIONAL. [STATES-GENERAL.]

ASSEMBLY OF DIVINES. [WESTMINSTER ASSEMBLY.]

ASSESSED TAXES. [TAXES.]

ASSESSOR. The word assessor is Latin (ad-sessor), and signifies one who sits by the side of another. An assessor was one who was learned in the law, and sat by a magistrate or other functionary,

such as the governor of a province (Præses), to aid him in the discharge of the judicial duties of his office. It is stated in the *Digest*, i. tit. 22, "De Officio Assessorum," "that all the duties of assessors, by which the learned in the law discharge their functions, lie pretty nearly in the following matters: cognitiones, postulationes, libelli, edicta, decreta, Epistolæ." The Latin words are here retained, because they cannot be correctly rendered by single equivalents in English. This passage shows that they were persons acquainted with the law, who aided in the discharge of their duties those functionaries who required such assistance. A work of the learned Jurist Sabinus is referred to by Ulpian (*Dig.* 47, tit. 10, i. 5), which appears from the title to have treated of the duties of assessors. An instance is mentioned in Suetonius (*Galba*, 14) of a man being raised from the office of assessor to the high dignity of Præfectus Prætorii. The Emperor Alexander Severus gave the assessors a salary. (Lampridius, *Alex. Severus*, 46.) In the later empire assessors were also called Conciliarii, Juris studiosi, and Comites. It is conjectured by Savigny (*Geschichte des Röm. Rechts im Mittelalter*, i. 79) that as the old forms of procedure gradually fell into disuse, the assessors took the place of the judges; or in other words, became Judges. Originally the assessor did not pronounce a sentence; this was done by the magistrate or person who presided. (See the passage in Seneca, *De Tranquill.* c. 3.)

Two officers called assessors are elected by the burgesses in all municipal boroughs, annually on the 1st of March. The qualifications are the same as those of a councillor; but actual members of the council, the town-clerk, and treasurer are ineligible. In corporate towns divided into wards, two assessors are elected for each ward. The duty of the assessors is to revise the burgess lists in conjunction with the mayor, to be present at the election of councillors, and to ascertain the result of elections. (5 & 6 Will. IV. c. 76.) The word assessor is not usually applied in this country to those whose duty it is to assess the value of property for local or public taxation. This is usually done by a

"surveyor," who adds this duty incidentally to his general private business. Under the Insolvent Act (7 & 8 Vict. c. 96) an assessor may be appointed for inferior courts, who has power to award imprisonment in cases of fraudulent debts.

**ASSESSOR.** In Scotland the magistrates of corporate burghs who exercise judicial powers, generally employ some professional lawyer to act as their assessor. It is his duty to see that the proper judicial control is exercised over the preparation of the pleadings, and to make out drafts of the judgments.

**ASSETS** (from the Norman French *assetz*, sufficient) is the real and personal property of a party deceased, which, either in the hands of his heir or devisee, or of his executor or administrator, is chargeable with the payment of his debts and legacies. Assets are either *personal* or *real*. Personal assets comprehend goods, chattels, debts, and devolve on the executor or administrator; and assets (including all real estate) descend to the heir-at-law, or are devised to the devisee of the testator. Assets are also distinguishable into *legal*, or such as render the executor or heir liable to a suit at common law on the part of a creditor, and *equitable*, or such as can only be rendered available by a suit in a court of equity, and are subject to distribution and marshalling among creditors and legatees, according to the equitable rules of that court.

**ASSIENTO TREATY**; in Spanish, **EL ASIENTO DE LOS NEGROS**, and **EL PACTO or TRATADO DEL ASIENTO**, that is, the compact for the farming, or supply, of negroes. It is plain that the word *Asiento*, though occasionally signifying an assent or agreement, cannot, as is sometimes stated, have that meaning in this expression. Spain, having little or no intercourse with those parts of Africa from which slaves were obtained, used formerly to contract with some other nation that had establishments on the western coast of that continent for the supply of its South American possessions with negroes. Such treaties were made first with Portugal, and afterwards with France, each of which countries, in consideration of enjoying a monopoly of the supply of negroes to the South Ame-

rican dominions of Spain, agreed to pay to that crown a certain sum for each negro imported. In both cases the Assiento was taken by a commercial association in France—by the Guinea Company, which thereupon took the name of the Assiento Company (*Compagnie de l'Assiente*). Both the Portuguese company and the French were ruined by their contract. At the peace of Utrecht, in 1713, the Assiento, which the French had held since 1702, was transferred to the English for a period of thirty years. In addition to the exclusive right of importing negroes, the new holders of the contract obtained the privilege of sending every year a ship of 500 (afterwards raised to 600) tons to Spanish America, with goods to be entered and disposed of on payment of the same duties which were exacted from Spanish subjects; the crown of Spain, however, reserving to itself one-fourth of the profits, and five per cent. on the remaining three-fourths. The contract was given by Queen Anne to the South Sea Company, which, however, is understood to have made nothing by it, although it was calculated that there was a profit of cent. per cent. upon the goods imported in the annual ship, which usually amounted in value to about 300,000*l*. So much of this sum as fell to the share of the Company was either counterbalanced by the loss attendant on the supply of the 4800 negroes which they were bound to provide every year, or went chiefly into the pockets of their South American agents, many of whom in a few years made large fortunes. The war which broke out in 1739 stopped the further performance of this contract when there were still four years of it to run; and at the peace of Aix-la-Chapelle, in 1748, the claim of England to this remainder of the privilege was given up. Spain indeed complained, and probably with justice, that the greatest frauds had been all along committed under the provision of the treaty which allowed the contractors to send a shipload of goods every year to South America. It was alleged that the single ship was made the means of introducing into the American markets a quantity of goods amounting to several times her own cargo. The public

feeling in Spain had been so strongly excited on the subject of this abuse, that it would have been very difficult to obtain the consent of that country to a renewal of the treaty.

**ASSIGNAT.** One of the earliest financial measures of the Constituent Assembly, in the French revolution, was to appropriate to national purposes the landed property of the clergy, which, upon the proposition of Mirabeau, was, by a large majority, declared to be at the disposition of the state. (Thiers, *Histoire de la Révolution Française*, vol. i. p. 194, 2nd ed.) Shortly afterwards, the assembly, desirous to profit by this measure, decreed the sale of lands belonging to the crown and the clergy to the amount of 400 millions of francs, or about sixteen millions sterling (Ib. p. 212). To sell at once so large a portion of the surface of France, without lowering the price of land by overloading the market to such an unexampled extent (Thiers, vol. vii. p. 377), and moreover in a time of mistrust, insecurity, rapid political change, and almost of civil war, was an object of no very easy attainment. It was first proposed that the lands should be transferred to the municipalities, which, not being provided with ready money, might give the state a bond or security for the price, and the state would pay its creditors with these securities, which could, in process of time, be realised, as the municipalities were able successively to sell, at an advantageous price, the lands thus made over to them. The holders of the securities would thus have a claim not on the government, but on the municipal bodies, which would be compellable by process of law to pay; and the creditor might moreover extinguish the debt by buying the lands when put up to sale, and by offering the security in payment. But it might happen that the holder of such securities would be unable to realise them, and might not be willing to purchase any of the lands of the state: in order, therefore, to obviate this objection to the securities in question, it was proposed that they should be transferable and be made a legal tender.

There was also another motive for the adoption of this latter expedient. In con-

sequence of the want of confidence and stagnation of trade which prevailed in France at this time, money had become extremely scarce, and much of the current coin had been withdrawn from circulation; the king and queen had even been forced to send their plate to the mint. (Thiers, vol. i. p. 100.) Under these circumstances it was determined to issue a paper-money, based on the security of the unsold lands belonging to the state. The notes thus issued (each of which was for 100 francs, equal to 4*l.*) were called *assignats*, as representing land which might be transferred or *assigned* to the holder; and all notes which came back in this manner to the government in payment for national lands were to be cancelled. They moreover bore an interest by the day, like English Exchequer-bills. The object of this measure was, therefore, to obtain the full value of the confiscated lands of the clergy (which in the actual state of France was impossible), and to supply the deficiency of coin in the circulation (arising from a feeling of insecurity) by a forced issue of inconvertible paper-money, which, as was predicted by M. de Talleyrand, the Bishop of Autun, would inevitably be depreciated, and cause misery and ruin to the holders of it. (Thiers, vol. i. p. 233-7, and note xviii. p. 382.) The first issue of assignats was to the amount of 400 millions, bearing interest: shortly afterwards 800 millions in addition were issued, but without the liability to pay interest (Ib. p. 256). The last of these issues was made in September, 1790. But as, in the beginning of the following year, the Legislative Assembly sequestered the property of all the emigrants, a numerous and wealthy class, for the benefit of the state (Thiers, vol. ii. p. 51), it was thought that the amount of the national securities having been increased, the issues might be safely increased likewise: accordingly, in September, 1792, although 2500 millions had been already issued, a fresh issue, to the amount of 200 millions, was ordered by the Convention. (Thiers, vol. iii. p. 151.) Towards the end of this year, the double effects of the general insecurity of property and person, and of the depreciation

of assignats caused by their over-issue, was felt in the high price of corn, and the unwillingness of the farmers to supply the markets with provisions. Wholly mistaking the causes of this evil, the violent revolutionary party clamoured for an assize, or fixed maximum of prices, and severe penalties against *accapareurs*, or engrossers, in order to check the avarice and unjust gains of the rich farmers. The Convention, however, though pressed both by factious violence and open insurrection, refused at this time to regulate prices by law. (Thiers, vol. iii. p. 311-7.) Prices, however, as was natural, still continued to rise; and although corn and other necessities of life were to be had, their value, as represented in the depreciated paper currency, had been nearly doubled: the washerwomen of Paris came to the Convention to complain that the price of soap, which had formerly been 14 sous, had now risen to 30. On the other hand, the wages of labour had not risen in a corresponding degree (see Senior on *Some Effects of Government Paper*, p. 81): so that the evils arising from the depreciation of the assignats greatly aggravated the poverty and scarcity which would under any circumstances have been consequent on the troubles and insecurity of a revolution. The labouring classes accused the rich, the engrossers, and the aristocrats, of the evils which they were suffering, and demanded the imposition of a maximum of prices. Not only, however, in the Convention did the most violent democrats declare loudly against a maximum, but even in the more popular assembly of the Commune, and the still more democratic club of the Jacobins, was this measure condemned, frequently amidst the yells and hisses of the galleries. As the Convention refused to give way, Marat in his newspaper recommended the pillage of the shops as a means of lowering prices—a measure immediately adopted by the mob of Paris, who began by insisting to have goods at certain fixed prices, and ended by taking the goods without paying for them. (Thiers, vol. iv. p. 38-52.) These and other tumults were, however, appeased, partly by the interference of the military, and partly

by the earnest remonstrances of the authorities: but the evil still went on increasing; corn diminished in quantity and increased in price; the national lands, on account of the uncertainty of their title and the instability of the government, were not sold, and thus the number of assignats was not contracted, and they were continually more and more depreciated.

At length the Convention, thinking that the depreciation might be stopped by laws, made it penal to exchange coin for paper, or to agree to give a higher price if reckoned in paper than if reckoned in coin. Still the over-issue had its natural effects: in June, 1793, one franc in silver was worth three francs in paper; in August it was worth six. Prices rose still higher; all creditors, annuitants, and mortgagees were defrauded of five-sixths of their legal rights; and the wages of the labourers were equal in value only to a part of their former earnings. The Convention, unable any longer to resist, in May, 1793, passed a decree which compelled all farmers to declare the quantity of corn in their possession, to take it to the markets, and sell it there only at a price to be fixed by each commune, according to the prices of the first four months of 1793. No one was to buy more corn than would suffice for a month's consumption, and an infraction of the law was punished by forfeiture of the property bought and a fine of 300 to 1000 francs. The truth of the declaration might be ascertained by domiciliary visits. The commune of Paris also regulated the selling of bread: no person could receive bread at a baker's shop without a certificate obtained from a revolutionary committee, and the quantity was proportioned to the number of the family. A rope was moreover fixed to the door of each baker's shop, so that as the purchasers successively came, they might lay hold of it, and be served in their just order. Many people in this way waited during the whole night; but the tumults and disturbances were so great that they could often only be appeased by force, nor were they at all diminished by a regulation that the last comers should be served first. A similar

maximum of prices was soon established for all other necessities, such as meat, wine, vegetables, wood, salt, leather, linen, woollen, and cotton goods, &c.; and any person who refused to sell them at the legal price was punished with death. Other measures were added to lower the prices of commodities. Every dealer was compelled to declare the amount of his stock; and any one who gave up trade, after having been engaged in it for a year, was imprisoned as a suspected person. A new method of regulating prices was likewise devised, by which a fixed sum was assumed for the cost of production, and certain percentages were added for the expense of carriage, and for the profit of the wholesale and retail dealers. The excessive issue of paper had likewise produced its natural consequence, over-speculation, even in times so unfavourable for commercial undertakings. Numerous companies were established, of which the shares soon rose to more than double or treble their original value. These shares, being transferable, served in some measure as a paper-currency; upon which the Convention, thinking that they contributed still further to discredit the assignats, suppressed all companies whose shares were transferable or negociable. The power of establishing such companies was reserved to the government alone.

In August, 1793, there were in circulation 3776 millions of assignats; and by a forced loan of 1000 millions, and by the collection of a year's taxes, this amount was subsequently reduced to less than two-thirds. The confidence moreover inspired by the recent successes of the republic against its foreign and domestic enemies, tended to increase the value of the securities on which the paper-money ultimately reposed: so that towards the end of 1793 the assignats are stated to have been at par. This effect is attributed by M. Thiers, in his 'History of the French Revolution' (vol. v. p. 407), to the severe penal laws against the use of coin: nevertheless we suspect that those who made this statement were deceived by false appearances, and that, neither at this nor any other time, not even at their first issue, did the real value of



assignats agree with their nominal value. (Thiers, vol. v. pp. 145-62, 196-208, 399-413.) However, this restoration of the paper-currency, whether real or apparent, was of very short duration, as the wants of the government led to a fresh issue of assignats: so that in June, 1794, the quantity in circulation was 6536 millions. By this time the law of the maximum had become even more oppressive than at first, and it was found necessary to withdraw certain commodities from its operation. Nevertheless, the commission of provisions, which had attempted to perform the part of a commissariat for the whole population of France, began to interfere in a more arbitrary manner with the voluntary dealings of buyers and sellers, and to regulate not only the quantity of bread, but also the quantity of meat and wood which each person was to receive. (Thiers, vol. vi. pp. 146-51, 307-14.) Other arbitrary measures connected with the supply of the army, as compulsory requisitions of food and horses, and the levying of large bodies of men, had contributed to paralyse all industry. Thus, not only had all commerce and all manufactures ceased, but even the land was in many places untilled. After the fall of Robespierre, the Thermidorian party (as it was called), which then gained the ascendancy, being guided by less violent principles, and being somewhat more enlightened on matters of political economy than their predecessors, induced the Convention to relax a little of its former policy, and succeeded in first excepting all foreign imports from the maximum, and afterwards abolishing it altogether. The transition to a natural system was, however, attended with great difficulty and danger, as the necessary consequence of the change was a sudden and immense rise of the avowed prices; and trade having been so long prevented from acting for itself, did not at once resume its former habits; so that Paris, in the middle of winter, was almost in danger of starvation, and wood was scarcely more abundant than bread. As at this time the power of the revolutionary government to retain possession of the lands which it had confiscated and to give a permanently good title to purchasers, was not doubted, it

is evident that a fear lest the national lands might not ultimately prove a valuable security did not now tend to discredit the assignats: their depreciation was solely owing to their over-issue, as compared with the wants of the country, and their inconvertibility with the precious metals. The government however began now to find that, although it might for some time gain by issuing inconvertible paper in payment of its own obligations, yet when the depreciated paper came to return upon it in the shape of taxes, it obtained in fact a very small portion of the sum nominally paid. Consequently they argued that, as successive issues depreciated the currency in a regular ratio (which however is very far from being the case), it would be expedient to require a larger sum to be paid for taxes according to the amount of paper in circulation. It was therefore decreed that, taking a currency of 2000 millions as the standard, a fourth should be added for every 500 millions added to the circulation. Thus, if a sum of 2000 francs was due to the government, it would become 2500 francs when the currency was 2500 millions, 3000 francs when it was 3000 millions, and so on. This rule however was only applied to the taxes and arrears of taxes due to the government, and was not extended to payments made by the government, as to public creditors or public functionaries. Nor did it comprehend any private dealings between individuals. (Thiers, vol. vii. pp. 40-51, 132-41, 232-89, 368-85, 420-8.) Iniquitous as this regulation was, as employed solely in favour of the government, it would nevertheless have been ineffective if its operation had been more widely extended; for the assignats, instead of being depreciated only a fifth, had now fallen to the 150th part of their nominal value. The taxes being levied in part only in commodities, and being chiefly paid in paper, produced scarcely anything to the government; which had however undertaken the task of feeding the city of Paris. Had it not in fact furnished something more solid than depreciated assignats to the fundholders and public functionaries, they must have died of starvation. Many, indeed, notwithstanding the scanty and

precarious supplies furnished by the government, were threatened with the horrors of famine; and numbers of persons threw themselves every evening into the Seine, in order to save themselves from this extremity. (Storch, *Economie Polit.* vol. iv. p. 168.)

To such a state of utter pauperism had the nation been reduced by the mismanagement of its finances and the ruin of public credit by the excessive issues of paper, that when the five Directors went to the Luxembourg, in October, 1795, there was not a single piece of furniture in the office. The doorkeeper lent them a rickety table, a sheet of letter-paper, and an inkstand, in order to enable them to write their first message to announce to the two Councils of State that the Directory was established. There was not a single piece of coin in the treasury. The assignats necessary for the ensuing day were printed in the night, and issued in the morning wet from the press. Even before the entry of the Directors into office, the sum in circulation amounted to 19,000 millions: a sum unheard of in the annals of financial profligacy. One of their first measures, however, in order to procure silver, was to issue 3000 millions in addition, which produced not much more than 100 million francs.

In this formidable state of things, the next measure adopted was worthy of the violent and shortsighted administration from which it emanated. A forced loan of 600 millions was raised from the richest classes, to be paid either in coin, or in assignats at the *hundredth* part of their nominal value. So that if the current paper was 20,000 millions, a payment of 200 millions would be sufficient to extinguish the whole. The government however refused to sanction this principle as against itself; for in paying the public creditor, it gave the assignat the *tenth* part of its nominal value. The land-tax and the duties in farm were required to be paid half in kind and half in assignats; the custom-duties, half in corn and half in assignats. In the meantime, until the funds produced by this loan, which was enforced with great severity, could be at the disposition of the state, the government went on issuing assignats till they had

absolutely lost all value, and had become waste-paper. It therefore anticipated its resources by issuing promissory notes payable in specie, when the forced loan should be collected, and with difficulty prevailed on bankers to discount them to the amount of 60 millions. At this time the Directory gave up the task of supplying Paris with bread, and allowed the bakers' shops to be opened as before: an exception being made in favour of the indigent, and of fundholders and public functionaries whose annual incomes were not more than 5000 francs. The payment of the loan, however, went on slowly, the produce of the government bills was exhausted, and fresh funds were required. Again the resource of assignats was resorted to, and in two months the currency had been raised to 36,000 millions by the issue of 20,000 millions, which even to the government were not worth the 200th part of their nominal value.

By this time some new financial expedient became necessary. It was expected that, by payments of taxes and of the forced loan to the government, the paper in circulation would soon be reduced to 24,000 millions. It was therefore determined to make a new issue of paper, under the name of *mandats*, to the amount of 2400 millions. Of this sum 800 millions were to be employed in extinguishing 34,000 millions of assignats, which were to be taken at a thirtieth part of their legal value: 600 millions were to be allotted to the public service, and the other 1200 millions retained in the public coffers. These *mandats* were to enable any person who was willing to pay the estimated value of any of the national lands to enter at once into possession; and therefore they furnished a somewhat better security than the assignats, as these could only be offered in payment at sales by auction; and consequently the price of the lands rose in proportion to the depreciation of the paper. The estimate of the lands having been made in 1790, was not true in 1795, at which time they had in some cases lost a half, in others two-thirds or three-fourths of their former value. The *mandat* of 100 francs, however, at its first issue, was worth only fifteen francs in silver; and the new

paper was soon so much discredited, that it never got into general circulation, and was not able to drive out the coined money, which was now almost universally employed in transactions between individuals. The only holders of mandates were speculators, who took them from the government and sold them to purchasers of national lands. By this entire discredit of the government-paper the prosperity of individuals had been in some measure restored, and trade revived a little from its long sleep. The government was destitute of all resource; its agents received nothing but worthless paper, and refused any longer to do their duties. The armies of the interior were in a state of extreme misery; while those of Germany and Italy were maintained only from the countries where they were quartered. The military hospitals were shut, the gens-d'armes were not paid or equipped, and the high roads were infested with bands of robbers, who sometimes even ventured into the towns.

In a short time the government were forced to abandon the mandates, as they had abandoned the assignats, and to declare that they should be received in payment of taxes and national lands only at their real value. Having fallen to near a seventieth of their ostensible value, they were, in the course of 1796, returned to the government in payment of taxes and for the purchase of lands; and with them ended the revolutionary system of paper-money, which probably produced more wide-spreading misery, more sudden changes from comfort to poverty, more iniquity in transactions both between individuals and the government, more loss to all persons engaged in every department of industry and trade, more discontent, disturbance, profligacy, and outrage, than the massacres in September, the war in La Vendée, the proscriptions in the provinces, and all the sanguinary violence of the Reign of Terror.

From the extinction of the mandates to the present time the legal currency of France has been exclusively metallic. (Thiers, vol. viii. pp. 85-9, 103-19, 158-62, 177, 183-91, 334-44, 423-4; Storch, *Cours d'Econ. Pol.* vol. iv. p. 164.)

ASSIGNATION. [ASSIGNMENT.]

ASSIGNEE—of a bankrupt. [BANKRUPT.]

ASSIGNEE—of an insolvent debtor's estate. [INSOLVENT DEBTOR.]

ASSIGNEE—of bill of lading. [BILL OF LADING.]

ASSIGNEE of a lease is the party to whom the whole interest of the lessee is transferred by assignment, which assignment may be made without the privity or consent of the lessor, unless the lessee is restrained by the lease from assigning over. The assignee becomes liable to the lessor, from the date of the assignment, for the payment of the rent and performance of the covenants in the lease; but such liability is limited to breaches of covenant during the existence of the assignee's interest, and may be got rid of by assigning over all his interest, and this even to an insolvent; for his liability, arising only from privity of estate, that is, from the actual enjoyment of the premises leased, ceases with such enjoyment; whereas the lessee remains liable to the rent and covenants during the whole term. It results also from the circumstance of the assignee's liability arising from privity of estate, that he is not liable to mere personal covenants which the lessee may have made with the lessor (as for instance, to build on premises not demised, or to pay a sum of money in gross), but only to such covenants as run with the land, as for instance, covenants to pay rent, to repair, to reside on the demised premises, to leave part of the land in pasture, to insure premises situate within the weekly bills of mortality, to build a new mill on the site of an old one, &c. The assignee, in order to become liable to the covenants, must take the whole estate and interest of the lessee; for if the smallest portion is reserved, he is merely an under-lessee, and not responsible to the original lessor. The interest of the assignee must also be a legal, not merely an equitable interest; and therefore if the lessee devise the premises leased to trustees in trust for A B, A B will not be chargeable as the assignee of the lessee's interest. The interest must also be an interest in lands or tenements; for if a lease is made of chattels (as for instance of sheep or cows, which sometimes happens), and the lessee cove-

nant for himself and his assigns to redeliver them, the assignee is not liable to the owner on this covenant; for there is no privity between the assignee and the owner, such privity only existing where the subject of the demise is real estate. Wilmot, C. J., says, in *Bally v. Wells*, "The covenant in this case is not collateral; but the parties, that is, the lessor and assignee, are total strangers to each other, without any line or thread to unite and tie them together, and to constitute that privity which must subsist between debtor and creditor to support an action." (Wilmot, 345.) The assignee may acquire his interest by operation of law, as well as by an actual assignment from the lessee, and therefore a tenant by *elegit*, who has purchased a lease under an execution, is liable as assignee to the lessor in respect of his privity of estate.

**ASSIGNEE.** In the long leases peculiar to the agricultural system of Scotland, the law affecting the right of transference to assignees has been held to be of peculiar importance. In an agricultural lease of ordinary length, assignees are excluded without stipulation; a lease beyond the ordinary length may be assigned where there is no stipulation to the contrary. It is usual to divide such leases into periods of nineteen or twenty-one years, a lease of one such period being considered an ordinary, and a lease of two or more such periods being an improving lease and in its nature assignable. A lease specially excluding assignees cannot be conducted for the benefit of the lessee's creditors should he become bankrupt, unless under the administration of the lessee himself. In leases of houses, gardens, or other premises not let for agricultural purposes, the right to assign is assumed, if not excepted by stipulation; but where the lease is for a particular purpose, the lessee cannot assign it for a totally different purpose: thus one who became tenant of a shop as a silk-mercier, was not allowed to assign his lease to an exhibitor of wax figures.

**ASSIGNMENT**, a deed or instrument of transfer, the operative words of which are to "assign, transfer, and set over," and which transfers both real and personal property. Estates for life and es-

tates for years are the principal interests in land which are passed by an assignment; and by the statute of Frauds and Perjuries (29 Charles II.) the assignment of such estates is required to be in writing. An assignment differs from a lease, in being a transfer of the entire interest of the lessor; whereas a lease is an estate for years taken out of a greater estate, creates the relation of landlord and tenant, and reserves to the lessor a reversion. If, however, a deed in effect passes the whole interest of the tenant, it operates as an assignment, though it be in form a lease, and though it reserve a rent. If A, having a term of twenty years in land, grants to B the whole twenty years, reserving a rent: in such case B is assignee of the whole term and interest, and not under-lessee to A; and A, for want of having a reversion, cannot distrain for the rent. A, in such case, can only sue B for the rent as for money due upon a contract. In all under-leases, therefore, it is necessary that part of the original term should remain in the lessor: a day is sufficient. (*Sheppard's Touchstone*, 266; *Blackstone, Comm. v. ii.* 326; *Bacon, Ab.* 7th edit. tit. *Assignment*.)

*An Assignment of Goods, Chattels, &c.* is frequently made by **BILL OF SALE**. As to all goods and chattels in possession, no objection ever existed to their transfer and assignment by deed of writing; but with respect to things *in action*, choses *in action*, as they are technically called (as debts, for instance), according to an ancient rule of the common law, now considerably modified, they could not be assigned over by the party to whom they were due, since the assignment gave to a third party a right of action against the debtor, and thus led to the offence of maintenance—that is, the abetting and supporting of suits in the king's courts by others than the actual parties to them. In the courts of common law this rule exists (with some exceptions) at the present day. Thus, if the obligee in a bond assign over the bond to a third party, the assignee cannot sue on the bond at common law in his own name; but such an assignment generally contains (and ought always to do so) a power of attorney from the obligee to the assignee, to sue in the obligee's name on

the bond. Courts of equity have always protected such assignments, and regarded the assignee, for valuable consideration, as the actual owner of the bond ; and the courts of common law so far recognise the right of the assignee, that if the obligor, after notice of the assignment, pay the money on the bond to the obligee, the courts will not permit him to plead such payment to an action brought by the assignee in the obligee's name on the bond. There are various things that are not assignable even in equity, for various legal reasons. A husband is entitled to sue for his wife's choses in action, and he can assign them, that is, sell them, to another person ; but as his right to assign is founded on his power to obtain the wife's choses in action by legal means, it follows that if at the time of the assignment the husband has not the power to obtain possession of his wife's choses in action, the assignment has no immediate effect. Neither the future whole-pay nor the future half-pay of an officer is capable of being assigned, it being considered contrary to public policy that a stipend given to a man for his public services should be transferred to another man not capable of performing them. The exceptions to the rule that *choses in action* are not assignable at law are many. The king might at all times become the assignee of a *chose in action* ; and after such an assignment he was entitled to have execution against the body, lands, and goods of the debtor. But this prerogative, having been abused by the king's debtors, was restrained by stat. 7 James I. c. 15, by a privy seal in 12 James I., and by rule of court of 15 Charles I. ; and the practice of actually assigning debts to the king by his debtors has long become obsolete. Bills of exchange are assignable by indorsement, in virtue of the custom of merchants [BILL OF EXCHANGE] ; and promissory notes, by virtue of the 3 & 4 Anne, c. 9. Bail bonds are assignable by the sheriff to plaintiff in the suit under 4 Anne, c. 16, s. 20. Replevin bonds, by the 11 Geo. II. c. 19. The petitioning creditor's bond under a fiat of bankruptcy, by 6 Geo. IV. c. 16.

The word assignment contains the same elements as the Roman word

"*assignatio*," or "*adsignatio*," which among other significations had that of an "assignment" of land, that is, a marking out by boundaries (*signa*) portions of public land which were given by the state to its citizens or veteran soldiers. Also it was used to signify the sealing of a written instrument, from which notion we easily pass to the notion of the effect of the sealed instrument, which is the sense that the word has obtained among us.

ASSIGNMENT. The term assignment is in colloquial use in Scotland, but the word which supplies its place in legal nomenclature is *assignment*. In some instances, however, where statutes employing the phraseology of the English law have been extended to Scotland, the word assignment has necessarily obtained a partial technical use in that part of the empire, *e. g.* in the transference of property in copyright, patents, and registered vessels. Assignations are a feature of considerable importance in the law of Scotland, both with reference to heritable or real, and to moveable property. The definition of an assignation as distinguished from any other species of conveyance is, that it conveys not a thing, but a title to a thing. Thus a bill of exchange comes within the character of an assignation, because it is, or professes to be, a conveyance in favour of the payee of a right in the person of the drawer to a sum due to him by the drawee. There is no rule known in the law of Scotland equivalent to that which affects the conveyance of a *chose in action* in England ; and except in those cases when from public policy, from the *delectus personæ* involved in the obligation, or from some other special cause, a transference is invalid, a right exigible by one person is capable of being made over by assignation to another.

Assignations are of great importance in the conveyance of heritable or real property. The old system of subinfeudation being still in operation in Scotland, a proprietor of heritable subjects whose right is indisputable, is frequently not in the position of having received feudal investiture from his superior. He is said in such a case to have a mere personal right, as holding in his hands the authority

for making his title real by investiture. This authority he transfers by assignation, and property is thus frequently passed through several hands by assignation before it is found expedient or necessary to complete the investiture. In conveyances of landed property such title-deeds as the party conveying has agreed to give to the party receiving, are transferred by assignation. For assignations to leases see ASSIGNEE.

As the transfer of moveable property is completed by delivery, the person who has the possession cannot convey (as in the case of land) his right to the thing as separate from the thing itself, and thus an assignation affecting moveable property can only take place when it is in the hands of a third party. The simple act of assignation may be effectual in all questions between the cedent and the assignee, but to make the third party who holds the property in his hands responsible as holding it for the latter and not for the former, the further ceremony of a formal intimation is necessary; and until such intimation be made, the cedent's creditors may attach the property in the hands of the holder. Presentment is the proper form of intimation in the case of a bill of exchange. In its most formal shape, an intimation of an assignation is made by the reading of the document to the debtor in presence of a notary and witnesses, and the evidence of the ceremony is the notarial certificate; but in the general case, other circumstances which put the fact of intimation beyond doubt, such as the debtor's admission of his liability to the assignee, are held as equivalents.

ASSIZE. This word has been introduced into our legal language from the French *assis*, and is ultimately derived from the Latin verb *assideo*, to sit by, or, as Coke incorrectly translates it, to sit together. The word *assido* is also found in legal records, and has a different meaning from *assideo*, signifying to assess, fix, or ordain. Thus in the *postea*, or formal record of a verdict in a civil action, it is said that the jury find for the plaintiff, *et assidunt damna ad decem solida*—"and they assess the damages at ten shillings;" and then the judgment of the court is given for the damages "per juratoris in

formâ prædictâ assessa." It is possible that the word assize, in cases where it signifies an ordinance, decree, or assessment, may be derived from this word. This etymology is not, however, given by Du Cange, Spelman, or any learned writer on this subject; though it obviously leads much more distinctly to several meanings of the word assize than the derivation from *assideo*. With reference to English law, the word assize has been called by Littleton *nomen æquivocum*, on account of its application to a great variety of objects, in many of which neither the etymology of the word nor its original meaning can be readily traced. In this article it is proposed to enumerate and explain in a summary manner the various significations of the term.

1. The term assize also signified an ordinance or decree made either immediately by the king or by virtue of some delegation of the royal authority. Thus the Assizes of Jerusalem were a code of feudal laws for the new kingdom of Jerusalem, formed in 1099, by an assembly of the Latin barons, and of the clergy and laity, under Godfrey of Bouillon. (Gibbon's *Decline and Fall*, vol. xi. p. 93.) In this sense also, in ancient English history, Fleta speaks of "the laws, customs, and assizes of the realm" (lib. i. cap. 17); and the ordinances made by the great council of nobles and prelates assembled by Henry II. in 1164, and commonly known as the "Constitutions of Clarendon," are called by Hoveden "*Assisæ Henrici Regis factæ apud Clarendonum*." In like manner the assizes of the forest were rules and regulations made by the courts to which the management of the royal forests belonged.

2. Analogous to these were the assizes or ordinances regulating the price of bread, ale, fuel, and other common necessities of life, called in Latin *assisæ venalium*. The earliest express notice of any regulation of this kind in England is in the reign of King John (1203), when a proclamation was made throughout the kingdom enforcing the observance of the legal assize of bread; but it is probable that there were more ancient ordinances of the same kind. In very early times these "*assisæ venalium*" appear to have

been merely royal ordinances, and their arrangement and superintendence were under the direction of the clerk of the market of the king's household. But subsequently many statutes were passed regulating the assize of articles of common consumption; the earliest of these is the assize of bread and ale, "*assisa panis et cervisiæ*," commonly called the stat. of 51 Henry III., though its precise date is somewhat doubtful. The provisions of the act with regard to ale, which established a scale of prices varying with the price of wheat, were altered in some measure by 23 Henry VIII. c. 4, which left a discretionary power with the justices of the peace of fixing the price of ale within their jurisdiction [ALE]; but the assize of bread was imposed by this act, and enforced from time to time by orders of the privy council until the reign of Queen Anne. In cities and towns corporate the power of regulating the assize of bread and ale was frequently given by charter to the local authorities, and the interference of the clerk of the king's household was often expressly excluded. Books of assize were formerly published, under authority of the privy council, by the clerk of the market of the king's household. The stat. 8 Anne, c. 19, repealed the 51 Henry III. and imposed a new assize of bread, and made various other regulations respecting it. Several subsequent acts have been passed on the subject; but by the 55 George III. c. 99, the practice was expressly abolished in London and its neighbourhood, and in other places it has fallen into disuse. There was also an assize of wood and coal (stat. 34 & 35 Henry VIII. c. 3); and in the reign of Queen Anne, we find an act (9 Anne, c. 20) enforcing former regulations for the assize of billet (firewood). Besides these, various other articles, wine, fish, tiles, cloth, &c., have at different times been subject to assize. Indeed the legislature of this country for a long time supposed that they could and ought to fix the price of the necessities of life. But experience has shown that to attempt to fix by law the prices of commodities, is not only useless and mischievous, but impracticable; and that when government has established a uniform

scale of weights and measures, and, so far as it can be done, a uniform measure of value, the rest may safely be left to competition, and to the mutual bargaining which takes place between the buyer and the seller.

There is an assize of bread in several parts of the Continent at the present time. In Paris, since 1825, the assize of bread has been fixed every fifteen days by an order of the police. This assize is regulated according to the prices of corn and of flour, which are published between the dates of each order. In the city of Cologne, and probably elsewhere in Prussia, the price of the loaf of black bread weighing eight (German) pounds is now (1844) fixed weekly by an order issued from the "royal police-office."

Kent, in his '*Commentaries on American Law*,' says that "*Corporation ordinances, in some of our cities, have frequently regulated the price of meats in the market;*" and he states that "*the regulation of prices in inns and taverns is still the practice in New Jersey and Alabama, and perhaps in other states; and the rates of charges are, or were until recently, established in New Jersey by the county courts and affixed up at inns, in like manner as the rates of toll at toll-gates and bridges.*" (Vol. ii. p. 330, ed. 1842.)

3. The word assize also denoted the peculiar kind of jury by whom the writ of right was formerly tried, who were called the grand assize. The trial by the *grand assize* is said to have been devised by Chief Justice Glanville, in the reign of Henry II., and was a great improvement upon the trial by judicial combat, which it in a great degree superseded. Instead of being left to the determination by battle, which had previously been the only mode of deciding a writ of right, the alternative of a trial by the grand assize was offered to the tenant or defendant. Upon his choosing this mode of trial, a writ issued to the sheriff directing him to return four knights, by whom twelve others were to be elected, and the whole sixteen composed the jury or grand assize by whom the matter of right was tried. The act of parliament, 3 & 4 Will. IV. c. 27, has now abolished this mode of trial.

[JURY.] By the law of Scotland, the jury, in criminal cases, are still technically called the assize.

4. The common use of the term assize at the present day in England is to denote the sessions of the judges of the superior courts, holden periodically in each county for the purpose of administering civil and criminal justice. These assemblies no doubt originally derived their denomination from the business which was at first exclusively imposed upon them, namely, the trial of writs of assize. According to the common law, assizes could only be taken (*i. e.* writs of assize could only be tried) by the judges sitting in term at Westminster, or before the justices in eyre at their septennial circuits. This course was productive of great delays to suitors, and much vexation and expense to the juries, or grand assize, who might have to travel from Cornwall or Northumberland, to appear in court at Westminster. To remedy this grievance, it was provided by Magna Charta, in 1215, that the judges should visit each county to take assizes of novel disseisin and mort d'ancestor. "Trials upon the writs of novel disseisin and of mort d'ancestor and of darreine presentment shall be taken but in their proper counties, and after this manner:—We (or if we are out of the realm) our chief justiciary shall send two justiciaries through every county four times a-year, who, with the four knights chosen out of every shire by the people, shall hold the said assizes in the county, on the day and at the place appointed. And if any matters cannot be determined on the day appointed to hold the assizes in each county, so many of the knights and freeholders as have been at the assizes aforesaid shall be appointed to decide them, as is necessary, according as there is more or less business." (Arts. 22 and 23, Magna Charta.) From this provision the name of justices of assize was derived; and by several later acts of parliament various authorities have been given to them by that denomination. By the 13 Edward I. c. 3 (commonly called the statute of Westminster 2), it was enacted, that the justices of assize for each shire should be two sworn judges, associating to them-

selves one or two discreet knights of the county; and they are directed to take the assizes not more than three times in every year. By the same statute, authority is given them to determine inquisitions of trespass and other pleas pleaded in the courts of King's Bench and Common Pleas. From this important act of parliament the jurisdiction of the judges of assizes to try civil causes, other than the writs of assize above mentioned, originally arose; and as, with some modifications, it forms the basis of their civil jurisdiction at the present day, it will be useful to explain the process by which the provisions of the statute are carried into effect. Besides the general authority to determine civil issues, it was provided by the statute of Westminster 2, that no inquest in a civil action should be taken by the judges of the superior courts when sitting at Westminster, unless the writ which summoned the jury for such inquest appointed a certain day and place for hearing the parties in the county where the cause of action arose. Thus, if a suit arose in Cornwall, the writ from the superior court must direct the sheriff of that county to return a jury at Westminster for the trial of the inquest in the next term, "*unless before*" (*nisi prius*) the term, namely on a certain day specified in the writ, the justices of assize came into Cornwall. This was sure to happen under the directions of a previous clause in the statute of Westminster 2, in the course of the vacation before the ensuing term, and the jury were then summoned before the justices of assize in Cornwall, where the trial took place, and the parties avoided all the trouble and expense of conveying their witnesses and juries to London. The jurisdiction of the judges of *nisi prius* is therefore an addition to their office of justices of assize; and thus, from the alteration in the state of society since the above laws were made, the principal or substantial part of their jurisdiction has, by the discontinuance of writs of assize, become merely nominal, while their annexed or incidental authority has grown into an institution of great practical importance.

For several centuries, until a few years ago, the whole of England was divided



into six circuits, to each of which two judges of assize were sent twice a-year. Previously to the year 1830, the Welsh counties, and the county palatine of Chester, were independent of the superior courts at Westminster, and their peculiar judges and assizes were appointed by the crown under the provisions of several statutes. This separation of jurisdiction being found inconvenient, the statute 1 William IV. c. 70, increased the number of judges of the superior courts, and enacted, that in future assizes should be held for the trial and despatch of all matters criminal and civil within the county of Chester and the principality of Wales under commissions issued in the same manner as in the counties of England. Since the passing of this statute, therefore, the assizes throughout the whole of England and Wales (excepting London and the parts adjoining) [CIRCUITS] have been holden twice a-year in each county upon a uniform system. Previous to the establishment of the Central Criminal Court in London, a third assize for the trial of criminals was held for several years for the counties of Hertford, Essex, Kent, Sussex, and Surrey.

The judges upon the several circuits derive their civil jurisdiction ultimately from the ancient statutes of assize and *nisi prius* in the manner before described; but they have also a commission of assize which is issued for each circuit by the crown under the great seal. This commission pursues the authority originally given by Magna Charta and the statutes of *nisi prius*, and seems to have been nearly in the same form ever since the passing of those statutes. It is directed to two of the judges and several serjeants (the serjeants derive their authority to be judges of assize from the statute 14 Edward III. c. 16, which mentions "the king's serjeant sworn," under which words Coke says that any serjeant at law is intended (2 *Inst.* 422), and commands them "to take all the assizes, juries, and certificates, before whatever justices arraigned." Under the direct authority given by these words, the commissioners have in modern times nothing to do, the "assizes, juries, and certificates" mentioned in the commission having only a

technical reference to the writs of assize, now wholly discontinued. It is stated in most of the common text-books that the judges of assize have also a commission of *nisi prius*. This is, however, a mistake; no such commission is ever issued, and the only authority of the judges to try civil causes is annexed to their office of justices of assize in the manner above described.

In certain cases, the justices of assize, as such, have by a statute a criminal jurisdiction; but the most important part of their criminal authority is derived from other commissions. The first of these is a general commission of Oyer and Terminer for each circuit, which is directed to the lord chancellor, several officers of state, resident noblemen and magistrates, and the king's counsel and serjeants on their respective circuits; but the judges, king's counsel, and serjeants, are always of the quorum, so that the other commissioners cannot act without one of them. This commission gives the judges of assize express power to try treason, felony, and a great variety of offences against the law of England, committed within the several counties composing their circuit. [OYER AND TERMINER.]

The judges of assize have also commissions of gaol delivery, which in their legal effect give them several powers which, as Justices of Oyer and Terminer only, they would not possess. They are directed to the judges, the king's counsel, and serjeants on the circuit, and the clerk of assize and associate. Every description of offence is cognizable under this commission; but the commissioners are not authorized to try any persons except such as are in actual or constructive confinement in the gaol specifically mentioned in their commission. There is a distinct commission under the great seal for the delivery of the prisoners in each particular gaol. [GAOL DELIVERY.]

The judges on their circuits have also a commission of assize. In addition to the above authorities, the judges of the superior courts on the circuits are also in the commission of the peace. The judges of the King's Bench, Common Pleas, and Exchequer, for the time being, are always

inserted in the commissions of the peace periodically issued for each English county; and consequently they may exercise all the powers and functions communicated by the commissions of the particular counties which compose their respective circuits.

In practice, the judges of the courts at Westminster choose their circuits by arrangement among themselves on each separate occasion. They are then formally appointed by the king under the sign manual; and the several commissions are afterwards made out in the Crown Office of the Court of Chancery from a fiat of the lord chancellor.

**ASSIZE.** In the practice of the criminal courts of Scotland, the fifteen men who decide on the conviction or acquittal of an accused person are called the assize, though in popular language, and even in statute, they are called the jury. [JURY.]

**ASSOCIATIONS.** [SOCIETIES.]

**ASSURANCE.** Of late years it has become usual with writers on life contingencies to speak of *assurances* upon lives, instead of *insurances*, reserving the latter term for contingencies not depending on life, as against fire, losses at sea, &c. [INSURANCE; ANNUITIES, &c.]

**ASYLUM**, the Latin and English form of the Greek *ἄσυλον*, which is generally supposed to be made up of a *privative* and the root of the verb *σὺλδω*, "to plunder," and therefore to signify, properly, a place free from robbery or violence, but this etymology is doubtful. Some have derived the Greek word from the Hebrew *לֵשֶׁן*, "a grove;" the earliest asylums, it is said, having been usually groves sacred to certain divinities. It is a pretty, rather than perhaps a very convincing illustration of this etymology, which is afforded by Virgil's expression as to the asylum opened by Romulus:—

"Hinc lucum ingentem, quem Romulus acer  
asylum  
 R tulit."—*Æn.* viii. 343.

The tradition was, that Romulus made an asylum of the Palatine Hill preparatory to the building of Rome. Plutarch tells us that he dedicated the place to the god *Asylæus* (*Romulus*, 9).

Probably all that is meant by these

stories is, that in those ages whoever joined a new community received shelter and protection; and even if he had committed any crime, was neither punished by those whose associate he had become, nor surrendered to the vengeance of the laws or customs which he had violated. Such an asylum was merely a congregation of outlaws bidding defiance to the institutions of the country in which they had settled, and proclaiming their willingness to receive all who chose to come to them.

In the Grecian states, the temples, or at least some of them, had the privilege of affording protection to all who fled to them, even although they had committed the worst crimes. The practice seems to have been, that they could not be dragged from these sanctuaries; but that, nevertheless, they might be forced to come out by being prevented from receiving food while they remained. (Thucydides, i. 126, 134.) Cleomenes, the king of Sparta, induced some Argives, who had taken refuge from him in a sacred place, to come out of it by false pretences, and all who came out were massacred. The rest, on discovering his treachery to their companions, would not come out, upon which the king ordered the place to be burnt, and, as we may presume, all the people in it perished; but the vengeance of the deity, according to the opinion of the Argives, overtook Cleomenes for this cruelty, and his subsequent madness was alleged as the consequence of this atrocious act. (Herodotus, vi. 80.) Eventually, these places of refuge became great nuisances, being, especially among the Greek cities, established in such numbers as sometimes almost to put an end to the administration of justice. In the time of the Emperor Tiberius an attempt was made to repress this evil by an order of the senate, directed to all the pretended asylums, to produce legal proofs of the privilege which they claimed. (Tacitus, *Annal.* iii. 60, &c.) Many were put down in consequence of not being able to satisfy this demand. Suetonius states that all the asylums throughout the empire were abolished by the Emperor Tiberius (*Suetonius. Tiberius*, 37); but the state-

ment of Suetonius is inconsistent with that of Tacitus.

The term *Asylus* (*Ἀσυλος*) was given as an epithet to certain divinities; as, for example, to the Ephesian Diana. It is also found on medals as an epithet of certain cities; in which application it probably denoted that the city or district was under the protection of both of two otherwise belligerent powers, and enjoyed accordingly the privileges of neutral ground.

It does not appear that the Roman temples were asyla, like many of the Greek temples. The complaint of the abuse of asyla, which is recorded by Tacitus, refers only to Greek temples. If the practice existed elsewhere, it may be inferred that it was not so extensive. Under the Empire however it became a practice to fly for asylum to the statues or busts of the emperors ("ad statuas confugere vel imagines," *Dig.* 48, tit. 19. s. 28, § 7), and the practice was accordingly so regulated as to render the asylum ineffectual unless the person who sought it had escaped from the custody of a more powerful person (*ex vinculis vel custodia, detentus à potentioribus*). A constitution of Antoninus Pius declared that if a slave in the provinces fled to the temples or the statues of the emperors to escape the ill-usage of his master, the governor of the province might compel the master to sell him (*Gaius*, i. 53). The words of the rescript of Antoninus are quoted in the Institutes of Justinian (i. tit. 8. s. 2).

After the decline and fall of paganism, the privilege of serving as asylums for malefactors was obtained by the Christian temples. The credit of conferring this honour upon churches in general is attributed to Pope Boniface V., in the beginning of the seventh century; but more than two hundred years before, certain sacred buildings of the new religion are said to have been declared asylums by the Emperor Honorius. Indeed, the practice of churches being used as asyla is said to date from the conversion of Constantine the Great (A.D. 323). The asylums thus established eventually grew throughout all Christendom to be a still more intolerable abuse than those of the ancient world had been. In most countries,

not only churches and convents, with their precincts, but even the houses of the bishops, came to be at length endowed with the privilege of sanctuary. In all these places the most atrocious malefactors might be found bidding defiance to the civil power. At the same time, there can be no doubt, that while in this way criminals were frequently rescued from justice, protection was also sometimes afforded to the innocent, who would not otherwise have been enabled to escape the oppression or private enmity which pursued them under the perverted forms of law. The institution was one of the many then existing which had the effect of throwing the regulating power of society into the hands of the clergy, who certainly were, upon the whole, the class in whose hands such a discretion was least likely to be abused. When communities, however, assumed a more settled state, and the law became strong with the progress of civilization, the privileges which had at one time armed the church as a useful champion against tyranny, became not only unnecessary, but mischievous. The church maintained a long and hard struggle in defence of its old supremacy; and in the face of the stand thus made, and in opposition to ancient habits, and the popular superstition by which they were guarded, it was only very cautiously that attempts could be made to mitigate the evil. For a long time the legal extent of the privilege of sanctuary appears to have been matter of violent dispute between the church and the civil power. In this country, it was not till the year 1487, in the reign of Henry VII., that by a bull of Pope Innocent VIII. it was declared, that if thieves, robbers, and murderers, having taken refuge in sanctuaries, should sally out and commit fresh offences, and then return to their place of shelter, they might be taken out by the king's officers. It was only by an Act of Parliament passed in 1534, after the Reformation, that persons accused of treason were debarred of the privilege of sanctuary. After the complete establishment of the Reformation, however, in the reign of Elizabeth, neither the churches nor sanctuaries of any other description were allowed to become places of refuge for

either murderers or other criminals. But various buildings and precincts in and near London continued for a long time after this to afford shelter to debtors. At length, in 1697, all such sanctuaries, or pretended sanctuaries, were finally suppressed by the Act 8 & 9 Will. III. c. 26.

In Scotland, the precincts of the palace of Holyrood in Edinburgh still remain a sanctuary for debtors. The boundaries of this privileged place are somewhat extensive, comprehending the whole of what is called "the King's Park," in which is the remarkable hill called "Arthur's Seat." The debtors find lodgings in a short street, the privileged part of which is divided from the remainder by a kennel running across it. Holyrood retains its privilege of sanctuary as being a royal palace; but it is singular as being now the only palace in this country any part of the precincts of which is the property, or at least in the occupation, of private individuals, and therefore open to the public generally.

In England, a legal asylum, or privileged place, is called a sanctuary; and this use of the word sanctuary appears to be peculiar to the English language. Both in this country and in America, the name of asylum is commonly given to benevolent institutions intended to afford shelter neither to criminals nor to debtors, but to some particular description of the merely unfortunate or destitute.

The Jewish Cities of Refuge, established by Moses and Joshua, are the most remarkable instance on record of a system of asylum founded and protected by the state itself for the shelter of persons who had violated the law. These cities, as we are informed in the twentieth chapter of the Book of Joshua, were six in number, three on each side of the Jordan. They only however protected the person who had killed another unwittingly. With regard to such a person the command was, "If the avenger of blood pursue after him, then they shall not deliver the slayer up into his hand; because he smote his neighbour unwittingly, and hated him not beforetime. And he shall dwell in that city, until he stand before the congregation for judg-

ment, and until the death of the high-priest that shall be in those days; then shall the slayer return, and come unto his own city, and unto his own house; unto the city from whence he fled." (*Joshua*, xx. 5, 6.) This institution may be regarded as an ingenious device for protecting, on the one hand, the guiltless author of the homicide from the popular resentment which his unfortunate act would have been likely to have drawn upon him; and cherishing, on the other, in the public mind, that natural horror at the shedding of human blood, which, in such a state of society, it would have been so dangerous to suffer to be weakened. We see the same principle in the penalty of the deodand imposed by the English law in the case of the accidental destruction of life by any inanimate object.

One of the most curious instances of the privilege of the sanctuary is that long enjoyed in Scotland by the descendants of the celebrated Macduff, Thane of Fife, the dethroner of the usurper Macbeth. It is said to have been granted at the request of the thane by Malcolm III. (Canmore), on his recovery of the crown of his ancestors, soon after the middle of the eleventh century. By this grant it was declared that any person, being related to the chief of the clan Macduff within the ninth degree, who should have committed homicide without premeditation, should have his punishment remitted for a fine, on flying to Macduff's Cross, which stood near Lindores in Fifeshire. Although this, however, is the account of the old Scottish historians, it is probable that the privilege only conferred upon the offender a right of being exempted from all other courts of jurisdiction except that of the Earl of Fife. Sir Walter Scott, in his *Minstrelsy of the Scottish Border*, has printed a Latin document of the date of A.D. 1291, in which the privilege to this latter extent is pleaded in favour of an Alexander de Moravia. The original deed is still in existence. Of Macduff's Cross only the pedestal now remains, the cross itself having been destroyed at the Reformation. It bore a metrical inscription, in a strange half-Latin jargon, the varying copies of which, still preserved, have given much occupa-

tion to the antiquaries. (Sibbald's *History of Fife*, particularly the second edition, 8vo. Cupar-Fife, 1802; Cunningham's *Essay upon Macduff's Cross*; and Camden's *Britannia*, by Gough.) [SANC-TUARY.]

ATHELING, or ÆTHELING. The indications, in the Saxon period of our history, of anything like the hereditary nobility of the times after the Conquest are exceedingly few: certainly, the system which gives to particular families particular names of distinction and particular social privileges, which are to descend in the families as long as the families endure, we owe entirely to the Normans. The Saxons had among them earls, but that word was used to designate, not as in these times only a rank of nobility, to which certain privileges are attached, but a substantial office bringing with it important duties; he was the superintendent indeed, under the king, of one of the counties or shires, and the sheriff, *gerefa*, in Latin *vice-comes*, was his inferior, his delegate or deputy. These earls, who were nominated by the king, held their offices as it seems for life, and were usually selected from the most opulent families. Even the kingship among the successors of Egbert seems not to have descended uniformly according to our modern principles of hereditary succession.

When the word Atheling has been found following a name by which a Saxon was designated, it has been supposed by some persons to be of the nature of a surname; and especially in the instance in which it is found united with Edgar, in him who was the last male in that illustrious family. Polydore Virgil, an Italian, who in the middle of the sixteenth century wrote a history of England in elegant Latin, falls into this error; for which he is rebuked by Selden, the author of the admirable work on the various titles of honour which have been in use in the countries of modern Europe. He shows that Edgar Atheling is the same as Edgar the Atheling, or the noble, and that while some of our earlier chroniclers, as Henry of Huntingdon and Matthew Paris, so designate him, others, as Hoveden and Florence, call him Edgarus Clyto. *Clyto* is the Greek term answer-

ing to *eminent, illustrious*. It is rather a remarkable fact concerning the Saxon kings of England and their families, that they affected titles and denominations of Greek origin, as *Clyto*, *Basileus* (king), and *adelphe* (sister); the last appears on the seal of the royal abbess of Wilton.

Nothing is known of any peculiar privileges belonging to the Athelings. But those who in modern times have had occasion to speak of the term and the circumstances under which it was used, such as Lingard and Turner in their histories of the Saxon period, speak of lands being usually given to the Atheling while still in his minority. And hence it is that this word Atheling has descended to our times in the local nomenclature of England.

ATTACHMENT, FOREIGN. This is a judicial proceeding, by means of which a creditor may obtain the security of the goods or other personal property of his debtor, in the hands of a third person, for the purpose, in the first instance, of enforcing the appearance of the debtor to answer to an action; and afterwards, upon his continued default, of obtaining the goods or property in satisfaction of the demand. The process in England is founded entirely upon local customs, and is an exception to the general law. It exists in London, Bristol, Exeter, Lancaster, and some other towns in England; and a mode of securing the payment of a debt by a proceeding against the debtor's goods in the hands of third persons, strongly resembling the process of foreign attachment, with some modifications, and under different names, forms a part of the law of Scotland, Holland, and most European countries in which the civil law prevails. In Scotland this proceeding is called *ARRESTMENT*. Many remarks upon the Scotch practice of attaching property, called *arrestment*, will be found in the examination of Mr. William Bell, in Appendix D to the Fourth Report of the Common Law Commissioners. In France a process of this kind exists under the name of *saïsie-arrest*; the regulations respecting it are in the *Code de Procédure Civile*, Partie I. livre 5. tit. 7, 557—582.

The custom of foreign attachment in

London differs in no material respect from the same custom in other parts of England; it is, however, much more commonly resorted to in the lord-mayor's and the sheriff's courts of London, than in any other local courts. It is not so much in use at the present day as formerly; of 389 actions tried in the lord-mayor's court in London in seven years, from 1826 to 1832, 201 were cases of attachment; and in many instances very large sums have been recovered in this manner. In the sheriff's court the cases of attachment have not been so numerous. The form of procedure is this:—

The creditor, who is the plaintiff in the action, makes, in the first instance, an affidavit of his debt, which should be actually due, as it is doubtful whether an attachment can be made upon a contract to pay money at a future day. But it is not necessary that the debt should have been contracted within the jurisdiction. (5 Taunt. 232; 1 Brod. & Bing. 491.) The affidavit of debt having been made, an action is commenced in the usual manner; the only parties named in the first instance being the creditor as plaintiff, and the debtor as defendant. A warrant then issues, or is supposed to issue, to the officer of the court, requiring him to summon the defendant; upon this warrant the officer returns that the defendant "has nothing within the city whereby he can be summoned, nor is to be found within the same," and then the attachment may be made. This return of *non est inventus* to the process against the defendant is of the very essence of the custom, and without it all the subsequent proceedings on the attachment would be invalid; in point of fact, however, where an attachment is intended, the officer never attempts to summon the defendant, or gives him any notice of the action, but merely makes his return to the warrant as a matter of course. After this return, a suggestion is made, or supposed to be made, by the plaintiff to the court, that some third person within the city has goods of the defendant in his possession, or owes him debts, by which goods, or debts, the plaintiff requires that the defendant may be *attached*, until he appears to answer to the action brought against

him. The attachment is then effected by a notice or warning served by the officer of the court upon the third party, who is called the garnishee, from an old French word *garnier*, or *garniser* (to warn), from whence *garnisé*, or vulgarly *garnishee* (the person warned), informing him that the goods, money, and effects of the defendant in his hands are attached to answer the plaintiff's action, and that the garnishee is not to part with them without the leave of the court. After this warning, the effect of which is to secure the property in the hands of the garnishee, the process again returns, or ought to return, to the defendant, who must be publicly called and make default on four successive court-days, before any further proceedings can be taken against his goods. In practice, however, no process is served upon the defendant either at this or any other stage of the proceeding; nor is he ever in fact called,—notice of the action or the attachment being, according to the present practice, never actually given to him. After the four court-days have elapsed, the garnishee may be summoned to show cause why judgment should not be given against him for the goods or debt formerly attached in his hands. He then either appears and pleads, or he makes default; if he makes default, and the subject of the attachment is money, or a debt ascertained, the judgment of the court is final in the first instance, and execution may be issued at once for the sum demanded. But where the subject of the attachment is goods, a formal appraisal is made, under a precept from the court in which the action is pending, by two freemen, who are sworn for the purpose; and judgment is then given for the goods so appraised. It sometimes happens that the garnishee has removed the goods before appraisal: in which case the officer returns the fact to the court, and a jury is empanelled to inquire and assess the value of the goods removed; and thereupon judgment and execution follow for the sum so assessed. But before execution can in any case issue against the garnishee, the plaintiff is required to enter into a recognizance with two sureties, obliging himself to return the money or goods taken under the

attachment, if the *defendant* appears in court within 'a year and a day, and disproves or avoids the debt.

The above is the course of proceeding in the case of a judgment by default. Instead of following this course, however, the garnishee, who is commonly the banker, factor, or agent of the defendant, usually appears and pleads. As matter of defence, he may deny that any debt is due from himself to the defendant, or that he possesses any goods or money of his; he may also show that he has a lien upon the defendant's goods in his own right. The question thus raised between the plaintiff and the garnishee is then tried by a jury, and judgment is given upon their verdict, with or without appraisalment, according to the nature of the property attached. According to the custom, the goods can never be actually seized in execution under the attachment; if the garnishee refuse to deliver them, the only remedy of the plaintiff is to arrest him. The practice in the matter of Foreign Attachment has been here stated generally; in practice many questions of law may arise.

A difference of opinion prevails amongst mercantile men with respect to the utility of this proceeding. On the one side, it is said to be important, in a commercial community, to be readily able to apply the property of an absent debtor, wherever it may be found, to the payment of his creditor; and this, it is contended, is particularly advantageous in a city much frequented by foreigners for the purpose of trade, who may contract debts during their abode in England, and then remove themselves to foreign parts, beyond the reach of personal process: on the other hand, it is supposed to embarrass commercial operations, in consequence of the enormous power which it places in the hands of creditors—a creditor for 20*l.* being entitled, if he pleases, to attach property to the amount of 20,000*l.*, or any larger sum, which cannot be applied in discharge of any commercial engagements which the debtor may have formed, until the attachment is disposed of. The apprehension of this process is said to deter foreign merchants from consigning cargoes to London. It does not, however,

appear to be likely that the existence of this custom should, under ordinary circumstances, have the effect of deterring the fair merchant from sending his goods to London; though it may well happen that a trader, who has contracted debts in London which he does not intend to pay, or who suspects that claims will be set up which he does not wish to afford the claimants any facilities in litigating, would hesitate to send a cargo to a port where, by means of this process, his creditors in that place might instantly seize it. Nor can much practical inconvenience arise from the power of attaching a large property for a small debt; for the garnishee, who is almost in all cases the agent of the defendant in some shape or other, may at any time dissolve the attachment, by appearing for the defendant and putting in bail to the action; or, if satisfied with the truth of the debt upon which the attachment issues, he may pay the plaintiff's demand, and take credit for the amount in his account with the defendant: for a payment under an attachment would be so far an answer to any demand against the garnishee by the defendant. The alleged objections do not, therefore, appear to be so formidable as has been represented; but the advantage of a speedy and safe mode of recovering debts is obvious.

There are, however, many imperfections in this form of proceeding. In the first place, no costs are recoverable on either side; and therefore when a small debt is contested, if the plaintiff succeeds against the garnishee, his costs may exceed the sum which he can recover; and if the garnishee succeeds in showing himself not to be liable to the attachment, he may incur a considerable expense without the possibility of reimbursement. Secondly, the efficiency of the custom is much impeded by the limited extent of its local jurisdiction. Thus, goods in a warehouse in Thames-street may be attached; but if lying in a lighter on the river Thames within a yard of the warehouse, they are exempt. If a merchant keep his cash with a banker in the city, it is liable to the process; but if his banker dwell a few yards beyond the limits of the city, no attachment can be made of his balance—

unless indeed the plaintiff should prepare himself with process, and be fortunate enough to serve it upon one of the partners when accidentally within the jurisdiction; in which case, as he is supposed to carry with him all the debts and liabilities of the house to which he belongs, the balance of any customer of the firm might be attached. But the most serious objection to the proceeding, as universally practised in London at the present day, arises from the palpable opportunity which it affords for fraudulent collusion between the plaintiff and the garnishee, to the injury of the defendant. By the letter of the custom, as above stated, the defendant must be sought in the first instance by the officer of the court; and if not found in the city, and if he does not answer when openly called in court, the first process of attachment may issue against his goods. Still no step can be taken towards appropriating them until the defendant has been solemnly called at four several courts; and then, and not till then, the garnishee may be summoned. In ancient times, therefore, when the custom was strictly adhered to, every possible precaution was taken to give notice to the defendant of the intended proceeding against his property; and unless he was actually absent from the country (in which case he might, on his return within a year and a day, resort for his protection to the securities given by the plaintiff for restoring the goods), it was scarcely possible that he should not be informed of it. But the present practice is to give no notice of any kind to the defendant. The summons, the return of *non est inventus*, the four separate defaults on being called in court, are indeed entered formally upon the record; and unless they were so entered in every case, the judgment against the garnishee would be erroneous; for the custom would be contrary to law, if it sanctioned a proceeding against a man or his property without notice. But this principle is at present reduced to mere form, and there is in practice no protection whatever to the defendant against a fraudulent collusion between the garnishee and the plaintiff. It is quite within the range of possibility that a solvent defendant may reside next door to the gar-

nishee with whom his goods are deposited; that the garnishee and plaintiff may agree to an attachment for a real or fictitious debt; that execution may issue; and even that the year and a day may expire, and consequently the property may be absolutely lost to the defendant before he has any notice of the transaction. This objection, however, applies not to the custom itself, which is in this respect just and reasonable, but to the abuse and corruption of it in modern practice.

ATTAINDER, from the Latin word *attinctus*, "attaint," "stained," is a consequence which the law of England has attached to the passing of sentence of death upon a criminal. Attainder does not follow upon mere conviction of a capital offence; because, after conviction, the judgment may still be arrested, and the conviction itself cancelled, or the prisoner may obtain a pardon: in either of which cases no attainder ensues. But as soon as sentence of death is passed, or a judgment of outlawry given, where the person accused flies from justice, which is equivalent to sentence of death, the prisoner becomes legally *attaint*, stained, or blackened in reputation. He cannot sue or be a witness in a court of justice; he loses all power over his property, and is rendered incapable of performing any of the duties, or enjoying any of the privileges, of a freeman. The person of a man attainted is, however, not absolutely at the disposal of the crown. It is so for the ends of public justice, but for no other purpose. Until execution, his creditors have an interest in his person for securing their debts; and he himself, as long as he lives, is under the protection of the law. (Macdonald's case, vol. xviii. of Howell's *State Trials*, p. 862.)

We shall consider, first, the subject of attainder as it exists by the ordinary laws of the realm; and, secondly, give some account of those extraordinary enactments commonly known by the name of Bills of Attainder.

1. The principal consequences of attainder, according to the ordinary course of law, are forfeiture of the attainted person's real and personal estates, and what is technically called corruption of the blood of the offender. The forfeiture of



the personal estate dates from the time of his conviction, but extends only to the goods and chattels of which he was actually possessed at that time. Real estate is not forfeited until attainder; but then the forfeiture (except in the case of attainder upon outlawry) has relation to the time when the offence was committed, so as to avoid all intermediate sales and incumbrances. (Co. Litt. 390 b.)

The extent and nature of the forfeiture of real estate upon attainder differ in the case of high treason, and in cases of murder or other felony. Attainder for high treason is followed by an immediate and absolute forfeiture to the crown of all freehold estates, whether of inheritance or otherwise, of which the person attainted was seised at the time of the treason committed. This consequence of attainder for high treason is said by Blackstone to be derived from Anglo-Saxon jurisprudence. Copyholds are forfeited to the lord of the manor upon the attainder of the tenant. Lands held in gavelkind are forfeited on attainder for high treason, but they are not subject to escheat for felony. (Robinson, *Gavelkind*, 2261.)

By stat. 5 & 6 Edw. VI. cap. 11, the dower of the widow of a person attainted for high-treason is also forfeited. But as there is no forfeiture unless an actual attainder takes place, if a traitor dies before judgment, or is killed in open rebellion, or is put to death by martial law, his lands are not forfeited, unless a special act of parliament is passed for the purpose. It is said, however (*Reports*, iv. 57), that if the chief justice of England in person, upon the view of the body of one killed in open rebellion, records the facts and returns the record into the court of King's Bench, both the lands and the goods of the rebel shall be forfeited.

This forfeiture of the estates of persons convicted of high treason was often productive of extreme hardship, by making their families, who were no parties to their crimes, participate in their punishment. In certain modern treasons, therefore, relating to the coin, created by statute, it is expressly provided that they shall work no forfeiture of lands, except for the life of the offender, and that they shall not deprive his widow of her dower.

(Stat. 5 Eliz. c. 11; 18 Eliz. c. 1; 8 & 9 Will. III. c. 26; 15 & 16 Geo. II. c. 28.)

In cases of attainder for murder or other felony, the forfeiture of lands to the crown does not extend for a longer term than a year and a day, with an unlimited power of committing waste upon the lands during that period. This is called in our old law-books "*The King's year, day, and waste.*" After the expiration of this term, the lands would descend to the heir of the person attainted, if the feudal law of escheat for corruption of blood did not intervene, and vest them in the lord of whom they are holden. In order, to understand the doctrine of escheat for corruption of blood, we must remember that, by the feudal law, from which our modern law of real property is chiefly derived, all lands were, or were supposed to be, held by gift from a superior lord, subject to certain services and conditions, upon neglect or breach of which (as well as upon failure of issue of the grantee) the lands reverted, or in feudal language escheated, that is, fell to the original giver. Now, by the attainder of a tenant in fee-simple for felony, the compact between him and his lord was totally dissolved; his blood was supposed to be corrupted, and he was disabled not only from inheriting lands himself, but from transmitting them to his descendants. Even though he had no lands in possession at the time of the attainder, and acquired none afterwards upon which the law of forfeiture could operate, the law of escheat might operate after his death to the prejudice of his descendants. For, owing to the corruption of his blood, which was considered to stop the course of descent, it was impossible to derive a title to any lands, either from him directly or from a more remote ancestor through him. The legal consequence of this doctrine was an escheat to the lord. As most lands in England at present are held of the king as the feudal superior, he is generally the sole party interested in the estates of attainted persons. We may be apt to confound forfeiture with escheat, unless we illustrate the difference between them by some familiar instance of their respective operations according to the law as it formerly stood. Thus (to take the

instance cited by Blackstone from Coke (*Comm.* ii. p. 253), if a father were seised in fee-simple, and his son committed treason and were attainted, upon the death of the father the lands escheated to the lord, because the son by the corruption of his blood was incapable of being heir, and there could be no other heir during his life: but nothing was forfeited to the king, for the son never had any interest in the lands to forfeit.

The hardship caused by the doctrine of the corruption of blood in punishing the offences of the guilty by a heavy punishment upon the innocent, has frequently attracted the attention of the legislature; though, until lately, little has been done towards permanently remedying the evil. The 1 Edw. VI. c. 12, § 17, enacted that attainder of treason, petit-treason, misprision of treason, and murder, or any felony, should not deprive the wife of her dower; but 5 & 6 Edw. VI. c. 11, § 13, restored the old law in the case of all treasons, and therefore a wife loses her dower in case her husband is attainted of any treason. But it has been usual, where a new felony has been created by act of parliament, to make an express provision that it shall not extend to corruption of blood. By the stat. 7 Anne, c. 21 (the operation of which was deferred by 17 Geo. II. c. 39), it was enacted that, after the death of the Pretender and his sons, no attainder for treason should extend to the disinheriting any heir, nor the prejudice of any person other than the offender. But, both these statutes being repealed by 39 Geo. III. c. 93, the ancient law of forfeiture for treason was restored. By 54 Geo. III. c. 145, corruption of blood was taken away for attainder, except in cases of treason, petit-treason (that is, where a wife has murdered her husband, a servant his master, or an ecclesiastic his superior), and other murders. By the act of 3 & 4 Wm. IV. c. 106, which relates to descent, it is enacted, § 10, "That when the person from whom the descent of any land is to be traced shall have had any relation, who, having been attainted, shall have died before such descent shall have taken place, then such attainder shall not prevent any person from inheriting

such land who would have been capable of inheriting the same, by tracing his descent through such relation, if he had not been attainted, unless such land shall have escheated before the 1st day of January, 1834." By another clause of this act, descent is always to be traced from the purchaser, that is, from the person who has acquired the land in some other way than by descent, and the last owner shall be considered to be the purchaser, unless it can be proved that he inherited the same, in which case the descent must be traced till we arrive at a person as to whom it cannot be proved that he inherited. In this act the word descent means the title to inherit land by reason of consanguinity, as well when the heir shall be an ancestor or collateral relation, as when he shall be a child or other issue. By this act, if a man's son should be attainted, and should die before lands descend to him, the son of such son would be enabled to inherit the lands, which was not the case formerly.

A dignity descendible to the heirs general is forfeited to the crown both for treason and for felony. An entailed dignity is forfeited for treason, but not for felony. Thus Lawrence, Earl Ferrers, whose peerage was limited to the heirs male of the body of his ancestor, being attainted for murder in the reign of George II., was succeeded by Washington, Earl Ferrers, his next brother. (*Cruise, Real Property*, lib. iv. sec. 64, 72, 73.)

The corruption of blood produced by attainder cannot be effectually removed except by an act of parliament. "The king," says Blackstone (*vol. ii. p. 254*), "may excuse the public punishment of an offender. He may remit a forfeiture in which the interest of the crown is alone concerned; but he cannot wipe away the corruption of blood; for therein a third person hath an interest, the lord, who claims by escheat." But it appears from the same author (*vol. iv. p. 402*) that the king's pardon is so far effectual after an attainder, that it imparts new inheritable blood to the person attainted, so that his children born after the pardon may inherit from him.

2. Besides the modes of attainder by

the common law, as above described, there have been frequent instances in the History of England of attainders by express legislative enactment, called Bills of Attainder. This has happened when, either from the extraordinary nature of the offence, or from unforeseen obstacles to the execution of the ordinary laws, it has been thought necessary to have recourse to the supreme power of parliament, for the purpose of punishing particular offences. These enactments, either in the shape of bills of attainder or bills of pains and penalties, have been made at intervals from an early period of our history, down to very recent times. The justice as well as the policy of these *ex post facto* laws has been often questioned; and they have generally occurred in times of turbulence or of arbitrary government; but the number of them is sufficiently large to form a formidable list of precedents. There were some instances of them under the Plantagenet princes, as the bills of attainder against Roger Mortimer and Edmund, Earl of Arundel, in the reign of Edward III. Both of these, however, were reversed in the same reign. It was not till the reign of Henry VIII., which was fertile in new crimes and extraordinary punishments, that the proceeding by bill of attainder became so common as almost to supersede trials according to the ordinary process of law. Scarcely a year passed without persons of the highest rank being brought to the scaffold by bill of attainder. Among them were the Earl of Surrey, Cromwell, Earl of Essex, who is said to have been the adviser of these measures, and most of those persons who suffered for denying the king's supremacy. All these persons were attainted upon mere hearsay evidence; and some not only upon no evidence at all, but without being heard in their defence. In the following reign of Edward VI., the Protector Somerset encouraged a bill of attainder for treason against his brother Lord Seymour of Sudley, the Lord High Admiral of England and husband of the Queen Dowager Catherine Parr, which was hurried through both houses of parliament without the accused being permitted to say anything in his defence. But as the na-

tion became better acquainted with the principles of constitutional freedom, parliamentary attainders became less frequent. Under the Stuarts recourse was seldom had to this extraordinary mode of proceeding. It was thought necessary to adopt it in the time of James I. with respect to Catesby, Percy, and several other persons, who were killed in the insurrection that ensued upon the discovery of the Gunpowder Plot, or died before they could be brought to trial, as they, not having been tried, could not have been attainted by the ordinary process of law. It was again adopted by the Long Parliament in Lord Strafford's case, on the ground that he was an extraordinary criminal, who would have escaped with little punishment if no other penalties than those of the existing laws had been inflicted on him. But even Lord Strafford's attainder was reversed after the restoration of Charles II., and all the records of the proceedings cancelled by act of parliament. The Duke of Monmouth, also, on his appearing openly in arms against the government in 1685, was attainted by statute. A remarkable instance of a proceeding by bill of attainder occurred in the case of Sir John Fenwick, who, in the year 1696, was attainted for a conspiracy to assassinate William III. There is no question that Sir John Fenwick might have been tried by the ordinary process of law. The excuse urged for resorting to a bill of attainder was, that there was no moral doubt of Fenwick's guilt; but that as two witnesses were required by the stat. 7 Will. III. cap. 3, in order to convict him; and as one of them had been tampered with and removed out of the kingdom, a legal proof of an overt act of treason became impossible.

The effect of this bill of attainder was, therefore, to suspend the statute of 7 Will. III. c. 3, before it had been two years in operation, in order to destroy an individual. This exertion of legislative power did not take place without a strong opposition, and has been frequently reprobated in subsequent times. Bishop Burnet, one of its most strenuous supporters, allowed that "this extreme way of proceeding was to be put in practice but

seldom, and upon great occasions." (Howell's *State Trials*, vol. xii.)

The legislature, acting in conformity with this opinion, have seldom, since the accession of the House of Hanover, had recourse either to bills of attainder or bills of pains and penalties. Bishop Atterbury, however, was deprived of all his offices and emoluments, declared incapable of holding any for the future, and banished for ever, by a bill of pains and penalties, which received the assent of George I. on the 27th of May, 1723. He was charged with carrying on a traitorous correspondence in order to raise an insurrection in the kingdom and procure foreign power to invade it. It was by a bill of pains and penalties that proceedings were taken against Queen Caroline, the wife of George IV., in 1820. During the Irish Rebellion, in 1798, Lord Edward Fitzgerald was arrested on a charge of high treason, and dying in prison, before he could be brought to trial, of the wounds which he had received in resisting his apprehension, he was attainted by act of parliament. But when the violence of party-spirit had subsided, the old principle of the constitution, that every man shall be considered innocent of a crime until his guilt has been legally proved, prevailed, and a few years ago the attainder was reversed.

The proceedings in parliament, in passing bills of attainder and of pains and penalties, do not vary from those adopted in regard to other bills. They may be introduced into either house. The parties who are subjected to these proceedings are admitted to defend themselves by counsel and witnesses. Bills for reversing attainders are "first signed by the king, and are presented by a lord to the House of Peers, by command of the crown, after which they pass through the ordinary stages in both houses, and receive the royal assent in the usual form." (May's *Parliament*.)

#### ATTAINTE. [JURY.]

ATTORNEY is a person substituted (*atourné, attornatus*), from *atourner, attornare*, to substitute, and signifies one put in the place or turn of another to manage his concerns. He is either a private attorney, authorised to make contracts, and

do other acts for his principal, by an instrument called a letter of attorney; or he is an attorney at law, practising in the several courts of common law. The latter description only will be treated of under this head.

An attorney at law answers to the *procurator*, or proctor, of the civil and canon law, and of our ecclesiastical courts. Before the statute 13 Edward I. c. 10, suitors could not appear in court by attorney without the king's special warrant, but were compelled to appear in person, as is still the practice in criminal cases. The authority given by that statute to prosecute or defend by attorney formed the attorneys into a regular body, and so greatly increased their number, that several statutes and rules of court for their regulation, and for limiting their number, were passed in the reigns of Henry IV., Henry VI., and Elizabeth: one of which, the 33 Henry VI. c. 7, states, that not long before there were only six or eight attorneys in Norfolk and Suffolk, "*quo tempore magna tranquillitas regnabat*," when things were very quiet; but that their increase to twenty-four was to the vexation and prejudice of the counties; and it therefore enacts, that for the future there shall be only six in Norfolk, six in Suffolk, and two in Norwich—a provision which is still unrepealed, though fallen into disuse. It will be convenient to consider:—

1st. The admission of attorneys to practise, their enrolment, and their certificates.

2nd. Their duties, functions, privileges, and disabilities.

3rd. The consequences of their misbehaviour.

4th. Their remedy for recovering their fees, &c.

1. *The admission of attorneys to practise, their enrolment, and certificates.*—The earlier regulations as to the admission of an attorney (3 Jac. I. c. 7, § 2, and rules of courts in 8 Car. I., and 1654) required that he should serve for five years as clerk to some judge, serjeant, counsel, attorney, or officer of court; that he should be found, on examination by appointed practisers, of good ability and honesty; and that he should be admitted

of, and reside in, some inn of court or chancery, and keep commons there. These were superseded by the 2 Geo. II. c. 23, § 5, which provided that no person should practise as an attorney in the superior courts unless he had been bound by contract in writing to serve for five years as clerk to a regular attorney, and had continued five years in such service, and had been afterwards examined, sworn, admitted, and enrolled in manner in the act mentioned, under penalty of 50*l.* and an incapacity to sue for his fees. This provision is, by subsequent statutes, extended to practising in the county court or the quarter-sessions; and by 34 Geo. III. c. 14, § 4, any person practising as an attorney without due admission and enrolment shall forfeit 100*l.* and be disabled from suing for his fees. The 1 & 2 Geo. IV. c. 48, and 3 Geo. IV. c. 16, are repealed, except as to Ireland, but the following provisions are re-enacted in the new act respecting attorneys (6 & 7 Viet. c. 73), with the addition of Durham and London to the other universities: persons having taken the degree of bachelor of arts or bachelor of law, in the university of Oxford, Cambridge, or Dublin [also Durham and London], and having served under contract in writing for *three* years with an attorney, and having been actually employed during the three years by such attorney or his agent in the business of an attorney, shall be qualified to be admitted as fully as if they had served five years; provided the degree of bachelor of arts was taken within six years after matriculation, and the degree of bachelor of law was taken within eight years after matriculation: the binding to the attorney must also be within four years after the taking of the degree. By the 22 Geo. II. c. 46, which is now repealed so far as relates to attorneys and solicitors, an affidavit was required to be made, within three months from the date of the articles of the execution thereof, by the attorney and by the clerk, which affidavit was to be filed in the court where the attorney was enrolled, and be read in open court before the clerk was admitted and enrolled an attorney. Acts of indemnity were, however, occasionally passed, relieving persons who had neglected to file

their affidavits within the limited time. By the last general stamp act, a duty of 120*l.* is imposed upon the articles of clerkship of attorney, and 1*l.* 15*s.* on the counterpart; and by 34 Geo. III. c. 14, § 2, the articles, duly stamped, were to be enrolled or registered with the proper officer in that court where the party proposes to practise as an attorney. No attorney is allowed, either by former acts or the one now in force, to have more than two articleed clerks at once, and these only during such time as he is actually in practice on his own account, and not at any time during which he himself is employed as clerk by another attorney. The clerk, in order to be admitted an attorney, must actually serve five years under his articles, unless he has taken a degree; but by 6 & 7 Viet., in case the attorney dies, or discontinues to practise, or the articles are by mutual consent cancelled, then the clerk may serve the residue of the time under articles to any other practising attorney, and the new articles are not subject to stamp-duty. The articleed clerk may serve one year, but not a longer time, with the agent of the attorney to whom he is articleed: a plan generally adopted by country clerks, who thus acquire a year's experience of the practice in London, without delaying their admission: and by the 1 & 2 Geo. IV. c. 48, § 2, now repealed, an articleed clerk who became *bonâ fide* a pupil to a barrister or certificated special pleader, for one whole year, might be admitted in the same manner as was done if he had served one year with the agent of the attorney to whom he was bound. Under 6 & 7 Viet. he may now serve one year with the London agent, and also one year with a barrister or special pleader, leaving three years only to spend with the attorney to whom he was articleed.

Formerly, before the clerk could be admitted an attorney, an affidavit was required of the actual service under the articles, sworn by himself or the attorney with whom he had served, to be filed in the court to which he sought admission; he also made oath (or affirmation, if a Quaker) that he had duly paid the stamp duty on the articles, and that he would truly and honestly demean himself as an attorney; and he then took the oaths of

allegiance and supremacy, and subscribed the declaration against popery, or, if a Roman Catholic, the declaration and oath prescribed by the 31 Geo. III. c. 32, § 1. After paying a stamp-duty on his admission of 25*l.*, his name was enrolled, without fee, by the officer of court, in books appointed for the purpose, to which books all persons had free access without payment of any fee. When the attorney was admitted, he subscribed a roll, which was the original roll of attorneys, which the court held as the recorded list of its officers, and from which the names were copied into the books.

An attorney, duly sworn, admitted, and enrolled in any of the superior courts of law, may be sworn and admitted in the High Court of Chancery without fee or stamp duty; and may practise in bankruptcy and in all inferior courts of equity; and so a solicitor in any court of equity at Westminster may be sworn, admitted, and enrolled an attorney of her Majesty's courts of law; and an attorney in a superior court at Westminster is capable of practising in all the other courts on signing the other rolls. An attorney admitted in one court of record at Westminster may, by the consent in writing of any other attorney of another court, practise in the name of such other attorney in such other court, though not himself admitted in such court. But if any sworn attorney knowingly permit any other person, not being a sworn attorney of another court, to practise in his name, he is disabled from acting as an attorney, and his admittance becomes void.

In addition to swearing, admission, and enrolment, an attorney, in order to be duly qualified for practice, must take out a certificate at the Stamp-office every year between the 15th November and 16th December for the year following, the duty on which is 12*l.* if he reside in London or Westminster, or within the delivery of the twopenny post, or within the city of Edinburgh, and has been in practice three years; or 6*l.* if he has been admitted a less time; and if he resides elsewhere, and has been admitted three years, 8*l.*; or if he has not been admitted so long, 4*l.*; and if he practise

of the proper duty, he is liable to a penalty of 50*l.* and an incapacity to sue for his fees. Acts of indemnity are occasionally passed to relieve attorneys who have neglected to take out their certificates in due time. The omission by an attorney to take out his certificate for one whole year formerly incapacitated him from practising, and rendered his admission void; but the courts had power to re-admit him on payment of the arrears of certificate duty, and such penalty as the courts thought fit. (37 Geo. III. c. 90.) This part of the act is repealed by 6 & 7 Vict.

The following are the most important provisions of 6 & 7 Vict. c. 73. This act was passed in 1843, and consolidates and amends several of the laws relating to attorneys and solicitors practising in England and Wales. It repealed wholly or in great part thirty-two acts, but the provisions of fifty-eight other acts are retained either wholly or in part. The admission of attorneys is now entirely regulated by this act. No person is to be admitted an attorney or solicitor unless he shall have served a clerkship of five years (unless he has taken a degree) to a practising attorney in England and Wales; and have undergone an examination, § 3. No attorney is to have more than two clerks at one time, or to take or retain any clerk after discontinuing business, or whilst clerk to another. A person bound for five years may serve one year with a barrister or special pleader, and one year with a London Agent, § 6. Within six months after a person is articulated, the attorney or solicitor to whom he is bound must make affidavit of his being a duly enrolled practitioner, with various particulars which are to be enrolled, § 8; and if not filed within six months, the period of clerkship will only be reckoned from the day of filing, § 9. Before the clerk can be admitted an attorney he must make an affidavit of having duly served; and the judges or any judge of the courts of Queen's Bench, Common Pleas, and Exchequer, may, before issuing a fiat for admission, direct an examination by examiners whom they shall appoint, and in such way as they think proper, touching

the articles and service, and the fitness and capacity of such person to act as an attorney. The Master of the Rolls, before admitting any person as a solicitor, is to adopt the same course of procedure. If the clerk is found duly qualified on examination, the oath of allegiance is administered, and an oath to the following effect:—"I, A. B., do swear (or solemnly affirm) that I will truly and honestly demean myself in the practice of an attorney (or solicitor, as the case may be) according to the best of my knowledge and ability. So help me God." The masters of the several courts of law at Westminster, or such other persons as the Lord Chief Justices and Lord Chief Baron shall appoint, are the proper persons under the act for filing affidavits of the execution of clerkship, and for having the care of the rolls of names. The Incorporated Law Society is appointed as registrar of attorneys and solicitors; and an alphabetical book or books is kept of all attorneys and solicitors, and it is the duty of the society as registrar to issue certificates of persons who have been admitted and enrolled, and are entitled to take out stamped certificates authorising them to practise as attorneys and solicitors. The Commissioners of Stamps are not to grant any certificate until the registrar has certified that the person applying is entitled thereto, and the commissioners are to deliver all such certificates yearly to the registrar, with the date of granting the certificate.

The examination of clerks, previous to admission as attorneys and solicitors, takes place at the Institution belonging to the Incorporated Law Society in Chancery Lane, in each term. Printed questions to the number of eighty or ninety are previously prepared. Four of these are preliminary, the third and fourth requiring a statement as to what law-books the clerk has read and studied, and what law-lectures he has attended. The other questions are arranged under the following heads: 1. Common and Statute Law and Practice of the Courts. 2. Conveyancing. 3. Equity and Practice of the Courts. 4. Bankruptcy and Practice of the Courts. 5. Criminal Law and Proceedings before Justices of the Peace.

2. *The duties, functions, privileges, and disabilities of attorneys.*—The principal duties of an attorney are care, skill, and integrity; and if he be not deficient in these essential requisites, he is not responsible for mere error or mistake in the exercise of his profession. But if he be deficient of proper skill or care, and a loss thereby arises to his client, he is liable to a special action on the case; as, if the attorney neglect on the trial to procure the attendance of a material witness; or if he neglect attending an arbitrator to whom his client's cause is referred; or if he omit to charge a defendant in custody at the suit of his client, in execution within the proper time. When an attorney has once undertaken a cause, he cannot withdraw from it at his pleasure; and though he is not bound to proceed if his client neglect to supply him with money to meet the necessary disbursements, yet before an attorney can abandon the cause on the ground of want of funds, he must give a sufficient and reasonable notice to the client of his intention. When deeds or writings come to an attorney's hands in the way of his business as an attorney, the court, on motion, will make a rule upon him to deliver them back to the party on payment of what is due to him on account of professional services and disbursements, and particularly when he has given an undertaking to re-deliver them; but, unless they come to his hands strictly in his business as an attorney, the court will not make a rule, but leave the party to bring his action against the attorney.

An attorney duly enrolled and certificated is considered to be always personally present in court, and on that account has still some privileges, though they are now much narrowed. Till lately he was entitled to sue by a peculiar process, called an attachment of privilege, and to be sued in his own court by bill; but the late act for uniformity of process, 2 Will. IV. c. 39, has abolished these distinctions, and an attorney now sues and is sued like other persons. By reason of the supposed necessity for his presence in court, an attorney is exempt from offices requiring personal service, as those

of sheriff, constable, overseer of the poor, and also from serving as a juror. These privileges, being allowed not so much for the benefit of attorneys as of their clients, are confined to attorneys who practise, or at least have practised within a year.

An attorney is also subjected to some disabilities and restrictions. No attorney practising in the King's Courts could formerly be under-sheriff, sheriff's clerk, receiver, or sheriff's bailiff; but that part of the act (1 Hen. V. c. 4) which related to under-sheriffs is repealed by 6 & 7 Vict. By rule of Michaelmas Term, 1654, no attorney can be a lessee in ejectment, or bail for a defendant in any action. By 5 Geo. II. c. 18, § 2, no attorney can be a justice of the peace while in practise as an attorney; and this clause is not repealed by 6 & 7 Vict., but there is an exception in favour of justices in any city or town being a county of itself, or to any city, town, cinque port, &c. having justices within their respective limits. No practising attorney can be a Commissioner of the Land Tax without possessing 100*l.* per annum. By 12 Geo. II. c. 13, which is repealed by 6 & 7 Vict., no attorney who was a prisoner in any prison, or within the rules or liberties thereof, could sue out any process, or commence or prosecute any suit, under penalty of being struck off the roll, and incapacitated from acting as an attorney for the future; and the punishment was the same for any attorney who suffered an attorney in prison to prosecute a suit in his name; but an attorney in prison might carry on suits commenced before his confinement; and the statute did not prohibit his defending, but only his prosecuting suits.

3. *The consequences of an attorney's misbehaviour.*—The court which has admitted an attorney to practise treats him as one of its officers, and exercises a summary jurisdiction over him, either for the benefit of his clients or for his own punishment in case of misconduct. If he is charged on affidavit with fraud or malpractice, contrary to justice and common honesty, the court will call upon him to answer the matters of the affidavit; and if he do not distinctly deny the charges imputed to him, or if he swear to an incredible story in disproof of them, the

court will grant an attachment. If the misconduct of the attorney amount to an indictable offence, the courts will in general leave him to be indicted by the party complaining, and wil. not call upon him to answer the matters of an affidavit. If the attorney has been fraudulently admitted, or has been convicted of felony, or any other offence which renders him unfit to practise, or if he has knowingly suffered his name to be used by a person unqualified to practise, or if he has himself acted as agent for such a person, or if he has signed a fictitious name to a demurrer purporting to be the signature of a barrister, or otherwise grossly misbehaved himself, the court will order him to be struck off the roll of attorneys. But striking off the roll is not a perpetual disability: for in some instances the court will permit him to be restored, considering the punishment in the light of a suspension only. An attorney may procure his name to be struck off the roll, on his own application; which is done when an attorney intends to be called to the bar. But it is necessary for him to accompany his application with an affidavit to the effect that he does not make the application in order to prevent any other person making it against him.

4. *The attorney's remedy for recovering his fees.*—An attorney may recover his fees from his client in an action of debt or *indebitatus assumpsit*, which he may maintain for business done in other courts as well as in that of which he is admitted an attorney. But an attorney cannot recover for conducting a suit in which, owing to gross negligence or other cause, the client has had no benefit whatever from the attorney's superintendence. The 2 Geo. II. c. 23, is repealed, but § 23 is preserved in the new act, which provides that no attorney shall sue for the recovery of his fees or disbursements till the expiration of one lunar month after he has delivered to his client a bill of such fees or disbursements, written in a legible hand, and subscribed with his own hand; and on application of the party chargeable, by such bill, the court, or a judge or baron of the court in which the business is done, may refer the bill to be taxed by the proper officer; and if



the attorney, or party chargeable, shall refuse to attend such taxation, the officer may tax the bill *ex parte*, pending which reference and taxation no action shall be commenced for the demand; and on the taxation and settlement of the bill, the party shall pay to the attorney, or as the court shall direct, the whole sum due on the bill, or be liable to attachment or process of contempt; and if it is found that the attorney has been overpaid, then he shall forthwith refund. The statute only applies to fees and disbursements for business done in a court of law or equity. If the whole bill were for conveyancing, it could not formerly be taxed, but conveyancing costs may be taxed under 6 & 7 Vict.: if any part of the bill be for business done in court, the bill must be delivered a month before the action is brought, or the attorney cannot recover, in which case *all* the items are taxed: under 6 & 7 Vict. the judge may authorize an action before the expiration of the month. Many nice distinctions have been drawn as to what transactions of an attorney constitute business done in a court so as to render his bill subject to taxation. For these we must refer to Tidd's *Practice*, tit. "Attorneys."

To assist an attorney in recovering his costs, he has a *lien* for the amount of his bill upon the deeds and papers of his client which have come to his hands in the course of his professional employment; and, till his bill be paid, the court will not order them to be delivered up, nor can an action be maintained for them. The attorney has also the same *lien* on any money recovered by his client which comes to his hands in the character of his attorney. As a further security to the attorney, his client is not permitted to discharge him and substitute another without obtaining the leave of the court or a judge's order for that purpose, which is never granted except upon the terms of paying the first attorney's bill. See Rule, 2 Will. IV. reg. 1, § 93. (Bac. *Abridgment*, tit. "Attorney," 7th edition; Tidd's *Practice*, 9th edition, chaps. iii. and xiv.)

**ATTORNEY-GENERAL.** The attorney-general is a ministerial officer of the crown, specially appointed by letters-

patent. He is the attorney for the king, and stands in precisely the same relation to him that every other attorney does to his employer. The addition of the term "general" to the name of the office probably took place in order to distinguish him from attorneys appointed to act for the crown in particular courts, such as the attorney for the Court of Wards, or the master of the Crown Office, whose official name is "coroner and attorney for the king" in the Court of King's Bench. By degrees the office, which has usually been filled by persons of the highest eminence in the profession of the law, has become one of great dignity and importance. The duties of the attorney-general are to exhibit informations and conduct prosecutions for such heinous misdemeanours as tend to disturb or endanger the state; to advise the heads of the various departments of government on legal questions; to conduct all suits and prosecutions relating to the collection of the public revenue of the crown; to file informations in the Exchequer, in order to obtain satisfaction for any injury committed in the lands or other possessions of the crown; to institute and conduct suits for the protection of charitable endowments, in which the king is entitled to interfere; and generally to appear in all legal proceedings and in all courts where the interests of the crown are in question.

The precise rank and precedence of the attorney-general have frequently been the subject of discussion and dispute. Indeed the early history and origin of this office, upon which the question of precedence in a great measure depends, is matter of great obscurity. There is no doubt that at all times the king must have had an attorney to represent the interests of the crown in the several courts of justice; but in early times he was probably not an officer of such high rank and importance as the attorney-general of the present day. There are no traces of such an officer till some centuries after the Conquest; and it is clear that, until a comparatively late period, the king's serjeant was the chief executive officer for pleas of the crown. (Spelman, *Gloss.* tit. "Serviens ad legem.") In the

old form of proclamation upon the arraignment of a criminal, the king's serjeant was, till very lately, always named before the attorney-general; and previously to the Commonwealth he invariably spoke before him in all criminal prosecutions, and performed the duty of "opening the pleadings," which since the Commonwealth has always been done by the junior counsel. In the reign of James I. a curious altercation between Sir Francis Bacon, who was then attorney-general, and a serjeant-at-law, upon this subject, is related in Bulstrode's 'Reports,' vol. iii. p. 32, upon which occasion Lord Coke, who was then chief justice, said that "no serjeant ought to move before the king's attorney, when he moves for the king; but for other motions any serjeant-at-law is to move before him." He added, that when "he was the king's attorney, he never offered to move before a serjeant, unless sit was for the king."

All questions respecting the precedency of the attorney-general and the serjeants were terminated by a special warrant of King George IV., when Prince Regent, in the year 1811, by which it was arranged that the attorney-general and the solicitor-general should have place and audience at the head of the English bar.

A discussion arose during the session of parliament 1834, at the hearing of a Scotch appeal in the House of Lords, upon the question of precedency between the attorney-general and the lord advocate of Scotland, which was finally decided in favour of the former.

AUBAINE, the name of the prerogative by which the kings of France formerly claimed the property of a stranger who died within their kingdom, not having been naturalized. It also extended to the property of a foreigner who had been naturalized, if he died without a will, and had not left an heir; as likewise to the succession to any remaining property of a person who had been invested with the privileges of a native subject, but who had quitted, and established himself in a foreign country. (Merlin, *Répertoire de Jurisprudence*, tom. i. p. 523.) It is called, in the French laws, the *Droit d'Aubaine*. Authors have varied as to its etymology.

Nicot (*Thresor de la Langue Française, tant ancienne que moderne*, fol. Paris, 1606) says it was anciently written Hobaine, from the verb *hober*, which signifies to remove from one place to another; Cujacius (*Opera*, fol. Neap. 1758, tom. ix. col. 1719) derives the word from *advena*, a foreigner or stranger; and Du Cange (*Glossar. v. "Aubain"*) from *Aibanus*, the name formerly given to the Scotch, who were great travellers. Ménage (*Dict. Etym.* fol. Paris, 1694) says, some have derived the word from the Latin *alibi natus*, a person born elsewhere, which seems the best explanation. (See also Walafridus Strabo, *De Vitâ S. Galli*, l. ii. c. 47.)

This practice of confiscating the effects of strangers upon their death is mentioned, though obscurely, in one of the laws of Charlemagne, A.D. 813. (*Capitularia Regum Francorum*, curante P. de Chinia, fol. Paris, 1780, col. 507, § 6.)

The *Droit d'Aubaine* was originally a seigniorial right in the provinces of France. Brussel, in his *Nouvel Examen de l'Usage général des Fiefs en France pendant le xi., le xii., le xiii., et le xiv. Siècle*, 4to. Paris, 1727, tom. ii. p. 944, has an express chapter, "Des Aubains," in which he shows that the barons of France, more particularly in the twelfth century, exercised this right upon their lands. He especially instances Raoul, Comte de Vermandois, A.D. 1151.

Subsequently, however, it was annexed to the crown only, inasmuch as the king alone could give the exemption from it, by granting letters of naturalization.

Various edicts, declarations, and letters-patent relating to the *Droit d'Aubaine*, between the years 1301 and 1702, are referred to in the 'Dictionnaire Universel de Justice' of M. Charles, 2 tom. fol. Paris, 1725; others, to the latest time, are given or referred to in the 'Code Diplomatique des Aubains,' par J. B. Gaschon, 8vo. Paris, 1818. The Duc de Levis, in his speech in the Chamber of Peers, when proposing its final abolition, 14th of April, 1818, mentioned St. Louis as the first King of France who had relaxed the severity of the law (compare *Etablissements de S. Louis*, l. i. c. 3), and Louis le Hutin as having abolished it entirely

in 1315 (compare the *Recueil des Ordonnances du Louvre*, tom. i. p. 610), but, as it turned out, for his own reign only. Exemption from the operation of the Droit d'Aubaine was granted in 1364 by Charles V. in favour of persons born within the states of the Roman Church. Louis XI., in 1472, granted a similar exemption to strangers dwelling at Toulouse; and Francis I., in 1543, to strangers resident in Dauphiné. Charles IX., in 1569, allowed exemption from it to merchant-strangers frequenting the fairs at Lyon. Henry IV., in 1608, granted exemption to the subjects of the republic of Geneva. Louis XIV., in 1702, to the subjects of the Duke of Lorraine. (Charles, *Dict.* tom. i. pp. 265, 267.) The Swiss and the Scotch of the king's guard had been exempted by King Henry II. (Bacquet, *Traité de Droit d'Aubaine*, p. i. c. 7.)

Partial exemptions from the Droit d'Aubaine were frequently conventional, and formed clauses in treaties, which stipulated for reciprocal relief to the subjects of the contracting parties; these exemptions, it is probable, continued no longer than the peace which the treaty had procured, and some related to moveable goods only.

In the treaty of commerce between England and France, in 1606, the *Jus Albinatús*, as it is termed, was to be abandoned as related to the English: "Ita ut in posterum aliquo modo jure Albinatús fisco addici non possint." (Rym. *Fœd.* tom. xvi. p. 650.) Letters-patent of Louis XIV., in 1669, confirmed in the parliament of Grenoble in 1674, exempted the Savoyards; and this exemption was confirmed by the treaty of Utrecht, in 1713. The inhabitants of the Catholic cantons of Switzerland were exempted by treaty in 1715. The particulars of numerous other conventional treaties are recorded in M. Gaschon's work, in the speech of the Duc de Levis already referred to, and in the 'Rapport' from the Marquis de Clermont-Tonnerre to the French Chamber of Peers, printed in the 'Moniteur' for 1819, pp. 96-98.

Louis XV. granted exemptions, first to Denmark and Sweden; then, in the treaty called the "Family Compact," to

Spain and Naples; to Austria, in 1766; to Bavaria, in 1768; to the noblesse of Franconia, Suabia, and the Upper and Lower Rhine, in 1769; to the Protestant Cantons of Switzerland, in 1771; and to Holland, in 1773. In Louis XVI.'s reign, other treaties of the same kind were made with Saxony, Poland, Portugal, and the United States. The abolition of the Aubaine, as it related to Russia, was a distinct article of another treaty; and, finally, by letters-patent, dated January, 1787, its abolition was pronounced in favour of the subjects of Great Britain.

The National Assembly, by laws dated August 6, 1790, and April 13, 1791 (confirmed by a constitutional act, 3rd of September, 1791), abolished the Droit d'Aubaine entirely. It was nevertheless re-established in 1804. (*Moniteur* for 1818, p. 551.) The treaty of Paris, 30th of April, 1814, confirmed the exemptions from the Aubaine as far as they were acknowledged in existing treaties. The final abolition of the Droit d'Aubaine, as already mentioned, was proposed by the Duc de Levis, April 14, 1818, and passed into a law, July 14, 1819, which confirmed the laws of 1790 and 1791. Foreigners can now hold lands in France by as firm a tenure as native subjects.

The Droit d'Aubaine was occasionally relaxed, by the kings of France, upon minor considerations. In the very early part of the 14th century, an exemption was obtained by the University of Paris for its students, as an encouragement to their increasing numbers. Charles V. granted the privilege in 1364 to such Castilian mariners as wished to trade with France. In 1366 he extended it to Italian merchants who traded to Nismes. The fairs of Champagne were encouraged in the same manner; and exemptions to traders were also granted by Charles VIII. and Louis XI. Francis I. granted the exemption to foreigners who served in his army; Henry IV. to those who drained the marshes or worked in the tapestry-loom. Louis XIV. extended the exemption to the particular manufacturers who worked at Beauvais and the Gobelins; then to the glass-

manufacturers who had come from Venice; in 1662, to the Dunkirkers, whose town he had acquired by purchase from England; and, lastly, to strangers settled at Marseille, that city having become the entrepôt of products from the Levant.

Ambassadors and persons in their suite were not subject to the Droit d'Aubaine; nor did it affect persons accidentally passing through the country.

That the Droit d'Aubaine existed in Italy, in the papal states, in the eleventh, twelfth, and thirteenth centuries, seems established by Muratori, 'Antiq. Ital. Medii Ævi,' fol. Mediol. 1739, tom. ii. col. 14.

An extensive treatise on the Droit d'Aubaine has been already quoted in the works of Jean Bacquet, *avocat de Roi en la Chambre de Thresor*, fol. Paris, 1665. See also 'Mémoires du Droit d'Aubaine,' at the end of M. Dupuy's 'Traitez touchant le Droits du Roy très-Chrestien,' fol. Par. 1655; and the 'Coutumes du Balliage de Vitry en Perthois,' par Estienne Durand, fol. Châlons, 1722, p. 254. But the most comprehensive view of this law, in all its bearings, will be found in the 'Répertoire Universel et Raisonné de Jurisprudence,' par M. Merlin, 4to. Paris, 1827, tom. i. p. 523, art. "Aubaine;" tom. vii. p. 416, art. "Heritier." The *Moniteurs* of 1818 and 1819 contain abstracts of the discussions while the abolition was passing through the two Chambers at Paris. See the latter year, pp. 314, 315, 509, 510, 728, 729. The chief passages in the former year have been already quoted.

AUCTION, a method employed for the sale of various descriptions of property. This practice originated with the Romans, who gave it the descriptive name of *auctio*, an increase, because the property was publicly sold to him who would offer most for it. In more modern times a different method of sale has been sometimes adopted, to which the name of auction is equally, although not so correctly applied. This latter method, which is called a Dutch auction, thus indicating the local origin of the practice, consists in the public offer of property at a price beyond its value, and then gra-

dually lowering or diminishing that price until some one consents to become the purchaser. An auction is defined by 19 Geo. III. c. 56, § 3, and 42 Geo. III. c. 93, § 3, to be "a sale of any estate, goods, or effects whatever, by outcry, knocking down of hammer, by candle, by lot, by parcel, or by any other mode of sale at auction, or whereby the highest bidder is deemed to be the purchaser." According to the revenue laws, every auction at which property is put up and bidden for is a "sale," so as to raise the charge of duty, without regard to the subsequent completion of the purchase by the delivering possession or actual transfer of the thing sold. There must, however, be an actual competition as to price, or biddings, or an invitation made to a competition of biddings, and if a single bidding is made the liability to pay auction duty is incurred.

The sale by auction was used by the Romans for the disposal of military spoils, and was conducted *sub hastâ*, that is, under a spear, which was stuck into the ground upon the occasion. This expression was continued, and sales were declared to be conducted *sub hastâ* in cases where other property was sold by auction, and probably after the spear was dispensed with. The phrase "*asta publica*" is still used by the Italians to signify a public sale or auction: the expression is, "*vendere all'asta publica*," or "*vendere per subasta*." The *auctio* transferred to the purchaser the Quiritarian ownership of the thing that he bought.

At the present day persons are sometimes invited to a "sale by the candle," or "by the inch of candle." The origin of this expression arose from the employment of candles as the means of measuring time, it being declared that no one lot of goods should continue to be offered to the biddings of the persons who were present for a longer time than would suffice for the burning of one inch of candle; as soon as the candle had wasted to that extent, the then highest bidder was declared to be the purchaser.

In sales by auction, the assent of the buyer is given by his bidding, while the assent of the seller is signified by the fall of the auctioneer's hammer.

and until this declaration has been made, the bidder is at liberty to withdraw his bidding.

It is a common practice for the owner of property offered for sale by auction to reserve to himself the privilege of bidding, and, as it is termed, buying in his goods, if the price offered by others should not suit him. As late as the time of Lord Mansfield, private biddings at auctions were considered to be illegal. In the present day, however, they are not only allowed by the law, but the legislature has so far recognised the propriety of the practice, that in cases where the property has been bought in either by the proprietor or by his declared agent, who is in general the auctioneer, no auction duty is chargeable; but if bought in by the owner personally, he must do so openly, and if bought in by an agent, he must do so by authority of a written notice. When a buyer-in afterwards becomes a purchaser, the transaction is narrowly looked after by the officers of the revenue, and the auctioneer's bond is liable to be put in suit if the auction duty has been fraudulently evaded.

It has been laid down that the buyer of goods at an auction cannot be held to the performance of his contract in cases where he was the only *bonâ fide* bidder at the sale, and where public notice was not given of the intention of the owner of the goods to bid, even though his agent was authorized to bid only to a certain sum. This rule is intended to act as a protection to purchasers against the practice commonly resorted to by disreputable auctioneers, of employing persons to make mock biddings with the view of raising the price by their apparent competition: the persons thus employed are aptly called *puffers*. In many large towns, and more especially in London, many persons make a trade of holding auctions of inferior and ill-made goods; persons called *barkers* are generally placed by them at the door to invite strangers to enter, and puffers are always employed, who bid more for the articles than they are worth, and thus entice the unwary. Many ineffectual attempts have been made to put a stop to these practices.

The auctioneer is considered the agent

of both parties, vendor and purchaser. In the language of the judges in a late case, "a bidder, by his silence when the hammer falls, confers an authority on the auctioneer to execute the contract on his behalf." He can therefore bind the parties by his signature according to the requisition of the Statute of Frauds, which renders it necessary in contracts of sale of "lands or any interest in or concerning them," and of goods above the value of 10*l.*, and that some "note or memorandum should be signed by the parties or their agents lawfully authorized." Such signature is now held sufficient even in an action brought by the auctioneer against the vendor in his own name. It has been doubted therefore, whether a bidder may not retract (in cases within the statute) at any time before the actual written entry. The auctioneer also stands in the situation of a stakeholder of the deposited part of the purchase-money, which he is not at liberty to part with till the sale has been carried into effect; and he cannot, at least after notice, discharge himself by paying over the amount to the vendor. It has been settled by a late decision that he is not liable for any interest on, or advantage which he may make from, the money in his hands. In this respect his situation differs from that of a mere agent, and also from that of one of the contracting parties (the vendor), from whom "interest is recoverable in the nature of damages for a breach of the original contract on the part of the vendor, by whose failure to make a good title the vendee has for a time lost the use of his money." (Mr. Justice James Parke.) An auctioneer (like any other agent and trustee concerned in the sale of property) is forbidden to buy on his own account; and when he sells without disclosing the name of his principal, an action will lie against himself for damages on the breach of contract.

The conditions of sale constitute the terms of the bargain, and purchasers are bound to take notice of them. The late Lord Ellenborough said that "a little more fairness on the part of auctioneers in framing particulars would avoid many inconveniences. There is always either

a suppression of the fair description of the premises, or something stated which does not belong to them; and in favour of justice, considering how little knowledge the parties have of the thing sold, much more particularly and fairness might be expected." The conditions usually contain a provision that "any error or mis-statement shall not vitiate the sale, but that an allowance shall be made for it in the purchase-money." But this clause is held only to guard against unintentional errors, and not to compel a purchaser to complete the contract if he has been designedly misled.

The duties that were levied upon goods sold by public auction were not charged according to any uniform scale. Sheep's wool of British growth, sold for the benefit of the growers, or of persons who had purchased directly from the growers, were subject to a duty of twopence for every twenty shillings of the purchase-money. This duty produced less than 20% in the whole of the United Kingdom, in 1842. Freehold, copyhold, or leasehold estates, whether in land or buildings; shares in the joint-stock of corporate or chartered companies; reversionary interest in any of the public funds; and ships or vessels—were liable to pay sevenpence for every twenty shillings: household furniture, horses, carriages, pictures, books, and the like kinds of personal property, were made to pay one shilling for every twenty shillings of the purchase-money. (45 Geo. III. c. 30.) Bonds granted under a local paving act, and charged upon certain premises, were held to be an interest in land, and as such subject to the lower rate of duty. Upon this principle dock-bonds, gas-work shares, railroad shares, canal shares, bridge shares, shares in a news room or library, pews in a church or chapel, policies, bonds, and other securities which created or conveyed any interest in land, tenements, or hereditaments, were charged only with the lower duty of sevenpence in the pound. (Bateman *On the Excise*, p. 332, ed. 1843.) But many exceptions were made by the legislature when imposing these duties. "Piece-goods, wove or fabricated in this kingdom, which shall be sold entire in the piece or quantity, as taken from the

loom, and in lots of the price of twenty pounds and upwards," were exempted from the payment of duty.

The produce of the whale and seal fisheries enjoyed an equal exemption, as well as elephants' teeth, palm oil, drugs, and other articles for the use of dyers: also mahogany and other woods used by cabinet-makers, and all goods imported by way of merchandise from any British colony in America, the same being of the growth, produce, or manufacture of such colony, and sold by the original importer within twelve months from the time of importation. Neither was any duty chargeable upon property sold by order of the courts of Chancery or Exchequer; nor on any sale made by the East India or Hudson's Bay Company; nor by order of the Commissioners of Customs, Excise, or other government boards of commissioners. In like manner, sales made by the sheriff for the benefit of creditors in execution of judgment, and bankrupts' effects sold by assignees, were not held liable to the payment of auction-duty; which last species of exemptions was made upon the principle of not aggravating their losses to innocent sufferers. Goods distrained for non-payment of tithes were also exempt. For the same reason, goods damaged by fire, or wrecked or stranded, which were sold for the benefit of insurers, were not charged with duty. Wood, coppice, the produce of mines or quarries, cattle, corn, stock or produce of land, might be sold by auction free of duty while they continued on the lands producing the same. The exemption only extended to the unmanufactured produce of land, and did not include cheese, butter, flour, &c.; and the stock of a nurseryman would be liable to the duty, the exemption being confined strictly to agricultural produce. By virtue of a Treasury warrant issued in 1822, auction-duty was not charged on the sale of property of foreign ministers to the court of Great Britain on their leaving England. The effects of officers and soldiers dying in her Majesty's service might be sold by auction by a non-commissioned officer or soldier, without incurring auction-duty; and in 1839 this exemption was extended to the effects of deserters.

In case the sale of an estate were declared void, through defect of title, the duty that had been paid might be claimed again within three months after the time when the defect had been discovered.

It was very common to stipulate that the buyer should pay the amount of duty in addition to the sums bid by him.

The duty on sales by auction in Great Britain was first imposed during the American war, in 1777 (17 Geo. III. c. 50), and in Ireland in 1797. In the last twenty years the amount of goods sold in the United Kingdom on which auction-duty was charged has varied from 10,148,571*l.* in 1825, to 6,326,481*l.* in 1831; and the amount of the duty has been as high as 328,833*l.* and as low as 218,084*l.* In 1840 the duty was 320,058*l.* charged on sales amounting to 8,720,985*l.* In 1841 the duty amounted to 314,067*l.*; 296,964*l.* in 1842, and 284,916*l.* in 1843. In 1842 it appears, from a table in M'Culloch's Dictionary, that the duty arose from the several articles enumerated below:—

On estates, houses, England. Scotland. Ireland.			
annuities, ships, £            £            £			
plate, jewels, &c. 101,536	5,067	6,727	
Household furniture, horses, carriages, and other goods & chattels	155,839	14,697	10,124
Sheep's wool....	17	2	under 1
Foreign produce (first sale thereof)	2865	74	11
	260,259	19,841	16,863

During the sitting of the Commissioners of Excise Inquiry they were waited upon by seven of the most eminent auctioneers in London, who represented that the duty of sevenpence in the pound, equivalent to three per cent. on the amount of the purchase-money, had for some time past caused a rapid and universal decrease in the number of actual sales by auction. One auctioneer stated that, in consequence of all sales of property in Chancery being exempt from auction-duty, "many bills are filed in the Court of Chancery, when the property is large, for no other purpose than saving the auction-duty, notwithstanding the great amount of law

expenses." Another of the deputation complained of the duty as "an unequal, oppressive, and impolitic tax," and suggested that instead thereof "there should be an additional ad valorem duty of one per cent. upon all transfers of real property, conveyed by deed or written instrument, whether sold by auction or private contract." The Commissioners in their report (twelfth) state that the auction-duty is open to great objections, and should be "wholly repealed as soon as practicable." They conceive that this impolitic tax has been "borne with patience solely in consequence of the exemptions, either direct or indirect, which the more powerful interests of the country, manufacturing and agricultural, have succeeded in obtaining from its operation." In consequence of these representations the auction-duties were repealed in 1845, and the recommendation of the Commissioners adopted.

The Romans imposed taxes on the produce of certain sales, and it may be presumed on all such sales, whether public or private. In the time of Augustus (Dion Cassius, *lv.* 31), a tax of two per cent. was imposed on the produce of sales of slaves. This tax is spoken of by Tacitus (*Ann.* *xiii.* 31) as being then a tax of four per cent. (if the reading is right). In the time of Nero it was enacted that the seller should pay the tax, from which it may be inferred that the buyer had hitherto paid it. The buyers of slaves were generally Romans, and the sellers were foreign dealers. This change in the mode of paying the duty was called a remission of the tax, but as Tacitus observes, it was a remission in name, not in effect, for the tax was still paid by the purchaser in the shape of a higher price. After the civil wars, and during the time of Augustus, a tax of one per cent. was imposed on the produce of sales by auction at Rome. In the time of Tiberius the tax was reduced to one-half per cent. (Tacit., *Ann.* *i.* 78, *ii.* 42); but after the death of Sejanus it was again raised to one per cent. Caligula (Suetonius, *Calig.* 16) remitted the tax again, by first reducing it to one-half per cent., and then remitting it altogether. (Dion Cassius, *lviii.* 16, and the note of Reimar.)

AUCTIONEER, a person whose pro-

fession or business it is to conduct sales by auction. It is his duty, previously to the commencement of every sale, to state the conditions under which the property is offered; to receive the respective biddings; and to declare the termination of the sale: for this purpose, he commonly makes use of a hammer, upon the falling of which the biddings are closed.

It is a legal implication that an auctioneer is authorized by the highest bidder or purchaser to sign for him the contract of sale, and the fact of the auctioneer's writing down in his book the name of such purchaser is sufficient to bind the purchaser, provided no objection be made by him previous to such entry. An auctioneer can also act as the agent of persons wishing to purchase, who may intrust him to make biddings for them. The auctioneer thus being the agent of both parties, his signature of the buyer's name in the catalogue to which the conditions of sale are annexed, opposite to the lot purchased, together with the price bid, has been considered a sufficient note or memorandum in writing of the bargain within the Statute of Frauds; but where the conditions of sale are not annexed to the catalogue, nor expressly referred to by it, the signature of the buyer's name in the catalogue is not a compliance with the statute.

By 8 Vict. c. 15, the duties on sales by auction are repealed, and also previous statutes, so far as they relate to the collection of these duties. A licence is declared necessary to carry on the business of an auctioneer, for which the sum of 10*l.* is to be paid: the licence is to be renewed ten days before the expiration thereof on the 5th of July in every year, under the penalty of 100*l.* for omission, and carrying on the business of an auctioneer without such licence (§ 2, 4). But certain sales need not be conducted by a licensed auctioneer; as goods sold under a distress for less than 20*l.* for rent or tithes, and under the provisions of certain Small Debts Acts. No separate licence is required to sell plate or other articles (§ 6).

By § 7, before the commencement of an auction the auctioneer is required to suspend in some conspicuous part of the

room a ticket or board, containing his full Christian and surname and place of residence; and shall produce his licence to, or deposit 10*l.* with any officer of Excise or Customs, or Stamps and Taxes, who may demand its production: in default he may be arrested at the termination of the sale, and conveyed before a justice of the peace, who may commit him to prison for any time not exceeding one calendar month, and this imprisonment is not to affect any proceedings for the penalty incurred for selling without a licence. On the production, within a week, of the licence, the deposit of 10*l.* is to be returned by the officer.

It seems that, if the auction is declared to be a sale "without reserve," the employment of a puffer by the vendor to bid for him, has been held to render the sale void, and to entitle the purchaser to recover back his deposit. *Thornett v. Haines*, Jer. Digest, 1847, 19.

If an auctioneer sell an estate without sufficient authority, so that the purchaser cannot obtain the benefit of his bargain, the auctioneer will be compelled to pay all the costs and loss the buyer may have incurred.

An auctioneer intending to hold a sale within the limits of the chief office of Excise in London must give two days' notice thereof at the said office. Wrecked vessels and their cargo may be sold at any place after only twenty-four hours' notice; but the circumstance must be specially reported to the Board of Excise. (*Board Order*, 1822.) Green or perishable fruit may also be sold at the port of importation on one day's notice, but not without a catalogue. (*Order*, 1833.) Imported goods may also be sold at the port of importation after a like notice. (*Treasury Warrant*, 1834.) These official regulations are from *Bateman On the Excise*, ed. 1843. The notices here mentioned must be in writing, and signed by the auctioneer, and must specify the particular day when such sale is to be held. It is further obligatory upon him to deliver in a written or printed catalogue, likewise attested by his signature, or by that of his authorized clerk, enumerating every lot and article intended



to be offered at such auction. The Commissioners of Excise Inquiry recommended that notices of sales in towns should be restricted to one day; and that books, approved by the Excise, should be kept by the auctioneer for the entry of all sales, and signed by his employer, in substitution of the catalogues furnished to the Excise.

If an auctioneer declines or omits at the time of sale to disclose the name of his employer, he makes himself responsible toward the buyers for all matters in regard to which the responsibility would otherwise lie with the owner of the property sold. He is also responsible to his employer for any loss or damage that may be sustained through his carelessness or want of attention to the instructions given; and if by his gross negligence the sale becomes nugatory, he can recover no remuneration for his services from his employer. If he receives money as a deposit on the sale of an estate, and, knowing that there is a defect in the title, pays that deposit over to his employer, he is answerable for the amount to the purchaser; and if he pay over the produce of a sale to his employer after receiving notice that the goods belong to another, the real owner may recover the value from the auctioneer.

The number of auctioneers' licences issued in England in 1840 was 3101; in Scotland, 394; and in Ireland, 303: total 3828; which cost 20,080*l.* 15*s.* A uniform payment of 10*l.* has proved more productive, but it presses more hardly on auctioneers in many parts of the country.

The word Auctioneer is the English form of the Latin "auctionarius," which signified anything pertaining to an auction: the "atria auctionaria" were the rooms in which auctions took place. The "tabulæ auctionariæ" contained the particulars of sale. Roman sales of public property were conducted by the magistrates, as the censors, ædiles, quæstors, according to circumstances. Private auctions, such as sales of a man's property, either in his lifetime or on his decease, were conducted by bankers (argentarii), or by a person who was called "magister auctionis." Notice of the sale and other particulars were given by notices (tabulæ, album) or

by a crier (præco). The præco or crier seems to have acted the part of the modern auctioneer so far as calling out the biddings and other matters that required bawling. The argentarius or magister entered the sales in a book. On the whole, a Roman auction was very like an English auction.

AUDITOR is the Latin word Auditor, which simply means "a hearer." The use of the word to signify one who examines into the accounts and evidences of expenditure has probably not been long established. The word "audit," as in the phrase to "audit accounts," and the "audit," in the sense of the examining of accounts and settlement of them, are also new.

The Auditors of the Imprest were ancient officers of the Exchequer, abolished in 1785, when "commissioners for auditing the public accounts" were appointed by 25 Geo. III. c. 52. Ten of these commissioners were appointed by 46 Geo. III. c. 141: the number is now six. Two of them are empowered by 1 & 2 Geo. IV. c. 121, § 17, to examine persons on oath, and to do all acts concerning the audit of public accounts. The Audit-Office, at Somerset-House, where this business is transacted, is immediately under the control of the Lords of the Treasury, who make such orders and regulations for conducting the business as they think fit.

The office of auditor, under the Poor-Law Amendment Act (4 & 5 Wm. IV. c. 75), if properly constituted, would be one of much higher importance than it has hitherto been. "The qualifications required in an auditor, beyond those of independence and impartiality, are of such a nature as to render it impossible to procure many efficient officers of the description required. A mere knowledge of accounts is only a small part of the requisite accomplishments. It is necessary that he should have a complete knowledge of the statutes and authorities by which the expenditure of the poor-rates is regulated, and of the Poor-Law Commissioners' rules, orders, and regulations, and be able to make sound and legal inferences from these authorities, so as to determine their effect in special cases. Some acquaintance with the law of contracts is necessary, and, above all,

a large experience of the nature of the pecuniary transactions of the guardians, overseers, and other accountable officers, without which it is impossible for him to exercise his important function of ascertaining, as he is bound to do in every case, the reasonableness of every item." (*Report of the Poor-Law Commissioners on the Continuance of the Commission*, p. 82.) The appointment of auditor is vested in the Board of Guardians, a rule inconsistent with sound principle, as the operations of the auditor are intended as a check upon the administration of the guardians. In 1837 a Select Committee of the House of Commons agreed to a resolution recommending that the Commissioners should have power to appoint district auditors, on the ground that the existing system was open to great abuse. The Commissioners had authority to combine unions for the appointment of auditors under § 46 of the Amendment Act; but though this gave a chance of persons being appointed less subject to local influence, it was difficult to ensure the combination of different Boards of Guardians. Assistant Poor-Law Commissioners also acted in some cases as auditors, but without salary.

Under the act passed in 1844 for the further amendment of the poor law, the Poor-Law Commissioners are empowered to combine parishes and unions into districts for the audit of accounts. (7 & 8 Vict. § 32.) The district auditor is to be elected by the chairman and vice-chairman of the different boards of the district, and his salary and duties are to be regulated by the Poor-Law Commissioners. By § 37 the powers of justices of the peace are to cease in the district for which an auditor is appointed.

Auditors are annually elected by the burgesses, under the Municipal Corporations Act (5 & 6 Wm. IV. c. 76, § 37), two for each borough. They audit the borough accounts half-yearly, and must not be members of the council. The mayor appoints a councillor to act with the auditors.

**AUGMENTATION, COURT OF.** This was a court established by 27 Hen. VIII. c. 27, for managing the revenues and possessions of all monasteries under

200*l.* a year, which by an act of the same session had been given to the king, and for determining suits relating thereto. The court was to be called "the Court of the Augmentations of the Revenues of the King's Crown," and was to be a court of record with one great seal and one privy seal. The officers of the court were, a chancellor, who had the great seal, a treasurer, a king's attorney and a king's solicitor, ten auditors, seventeen receivers, with clerk, usher, &c. The oaths of the different officers are given in § 4 of the act. All the dissolved monasteries under the above value, except those preserved incorporate, were in survey of the court, and the chancellor of the court was directed to make a yearly report of their revenues to the king. The annual revenue of 376 monasteries under 200*l.* a year, which were suppressed, was 32,000*l.*, and the value of their goods, chattels, plate, &c. was estimated at 100,000*l.*

The records of the Court of Augmentation are now at the Augmentation-Office in Palace-Yard, Westminster, and may be searched on payment of a fee.

**AULIC COUNCIL** was instituted by the Emperor Maximilian I., in 1500. Towards the close of the 15th century, the progress of the Turks alarmed the princes of Germany, and led them to feel more strongly than ever the necessity of sacrificing their petty quarrels, and of uniting in order to resist the common enemy. Accordingly, when the emperor assembled the Diet of Worms in 1495, and proposed a levy against the Turks, he was answered, that it was first requisite to restore internal concord, and that the establishment of a high court of justice for the settlement of all differences was the first step towards such union. The Imperial Chamber was accordingly instituted in 1496, as the high court of justice of the empire, the right of private war being at the same time abolished. It was to consist of one judge of princely rank, and of sixteen assessors, holding their office independent of any power. This tribunal was first fixed at Frankfort, then at Worms, at Nürnberg, and lastly at Spire: it was modified after the peace of Westphalia, and the number of judges

was greatly increased, one half being Protestants.

Not contented with thus organizing a federal judicature, the German princes, who then aimed at establishing constitutional rights, demanded of Maximilian a permanent council or senate, composed partly of members of the diet, who should govern the empire during the frequent absence of the emperor. Maximilian answered indirectly, that he had no objection to appoint a Hofrath, or court council, consisting of such noble and prudent men as he should select, who should perform the duties alluded to by the diet. The latter assembly, nevertheless, persisted, and succeeded for the time in their plan, carrying the point of having a federal senate, called the Regiment, or Reichs Regiment. Maximilian, on his part, founded what he had promised—a hofrath, at Vienna in 1500. By degrees this purely Austrian institution rose on the ruins both of the Imperial Chamber and the Regiment, till it almost superseded the former, and altogether the latter. The Hofrath is the Aulic Council. Its rise at the time that the federal institution declined or perished, marks the simultaneous elevation of the house of Austria over the old and independent spirit of the German confederation.

The judicial functions reserved for the Aulic Council were:—1. All feudal causes; 2. All cases of privilege or reserve in which the emperor was personally concerned; 3. All Italian causes. The merely civil and German cases were referred to the Imperial Chamber. But the Austrian princes made use of the Aulic Council in other than judicial functions. It was with them not only a court of appeal, but a political council, which was called upon to give the monarch advice in weighty matters, more especially of legislation. It thus corresponded with the French Grand Conseil, or Conseil d'Etat. Charles V. modified considerably the Aulic Council, extended its jurisdiction to Italy and the Netherlands, filled it with foreign members, and altered its forms of procedure. But Ferdinand, his successor, hearkening to the complaints of his subjects against these innovations, rendered the court once more

purely German, expelled foreign judges, and restored the ancient forms. It was finally regulated by Ferdinand III. in an edict, issued in 1654, subsequent to the treaty of Westphalia and the admission of Protestants to share in all the privileges and functions of the empire.

At the extinction of the German empire by the renunciation of Francis II. in 1806, and the establishment of the Confederation of the Rhine under the protection of the Emperor Napoleon, the Aulic Council ceased to exist. There is, however, an Aulic Council at Vienna for the affairs of the war department of the Austrian empire; it is called *Hofkriegsrath*, and consists of twenty-five councillors. The members also of the various boards or chancellories of state for the affairs of Bohemia, Hungary, and Transylvania, Italy, and Galicia, are styled Aulic Councillors, but are inferior in rank to the councillors of state, of which latter two sit at the head of each board. (*Austria as it is*, London, 1827.)

#### AUXILIA. [AIDS.]

AVERAGE is a quantity intermediate to a number of other quantities, so that the sum total of its excesses above those which are less, is equal to the sum total of its defects from those which are greater. Or, the average is the quantity which will remain in each of a number of lots, if we take from one and add to another till all have the same; it being supposed that there is no fund to increase any one lot, except what comes from the reduction of others. Thus, 7 is the average of 2, 3, 4, 6, 13, and 14; for the sum of the excesses of 7 above 2, 3, 4, and 6—that is, the sum of 5, 4, 3, and 1—is 13; and the sum of the defects of 7 from 13 and 14—that is, the sum of 6 and 7—is also 13. Similarly, the average of 6 and 7 is  $6\frac{1}{2}$ . To find the average of any number of quantities, *add them all together, and divide by the number of quantities*. Thus, in the preceding question, add together 2, 3, 4, 6, 13, and 14, which gives 42; divide by the number of them, or 6, which gives 7, the average.

It must be remembered that the average of a set of averages is not the average of the whole, unless there are equal numbers of quantities in each set averaged. This

will be seen by taking the average of the whole, without having recourse to the partial averages. For instance, if 10 men have on the average 100*l.*, and 50 other men have on the average 300*l.*, the average sum possessed by each individual is not the average of 100*l.* and 300*l.*; for the 10 men have among them 1000*l.*, and the 50 men have among them 15,000*l.*, being 16,000*l.* in all. This, divided into 60 parts, gives 266*l.* 13*s.* 4*d.* to each. A neglect of this remark might lead to erroneous estimates; as, for instance, if a harvest were called good because an average bushel of its corn was better than that of another, without taking into account the number of bushels of the two.

The average quantity is a valuable common-sense test of the goodness or badness of any particular lot, but only when there is a perfect similarity of circumstances in the things compared. For instance, no one would think of calling a tree well grown because it gave more timber than the average of all trees; but if any particular tree, say an oak, yielded more timber than the average of all oaks of the same age, it would be called good, because if every oak gave the same, the quantity of oak timber would be greater than it is. It must also be remembered that the value of the average, in the information which it gives, diminishes as the quantities averaged vary more from each other.

AVERAGE, in Marine Insurance. If any part of the ship or furniture, or of the goods, is sacrificed for the sake of saving the rest, all parties interested must contribute towards the loss. This contribution is properly called "Average." It is sometimes called general average, in opposition to special or particular average, which is the contribution towards any kind of partial damage or loss, or gross average, in opposition to petty average, which is the contribution mentioned in the bill of lading towards the sums paid for beaconage, towage, &c.

The principle of average is recognised in the maritime law of all nations. It was introduced into the civil law from the law of Rhodes (*Dig.* 14, tit. 2, "*Lex Rhodia de Jactu*;" and the Commentary of Peckius, 'In tit. *Dig. et Cod.* "Ad

*Rem Nauticam pertinentes*"'). In order to constitute such a loss as is the subject of average, it must be incurred by design: the masts must be cut away, or the goods thrown overboard; and this must be done for the sake of saving the rest, as in the case of throwing goods overboard to keep the vessel from sinking or striking on a rock, or to lighten her that she may escape from an enemy, or of cutting away a mast or a cable to escape the perils of the storm. The necessary consequences of these acts are also the subjects of average; as where, in order to throw some goods overboard, others or some parts of the ship are damaged; or where it becomes necessary, in order to avoid the danger or repair the injuries caused by a storm or the enemy, to take goods out of the ship, and they are in consequence lost. The expenses also incurred in these operations are equally the subject of average. But the injuries incurred by a ship during an engagement with the enemy, or from the elements in consequence of measures taken to escape from an enemy, are not of such a nature as to fall within the definition. If goods are laden on deck, no average is recoverable in respect of the loss occasioned by throwing them overboard, unless by the usage of trade such goods are usually so laden. If a ship is voluntarily stranded for the purpose of saving her and the goods, and afterwards gets off safely, the expenses incurred by the stranding are the subject of general contribution; but if the ship be wrecked in consequence of the voluntary stranding, the wrecking, not being voluntary, is therefore not such a loss as calls for a general contribution. If, in consequence of such an injury done to a ship as would be the subject of average, she is compelled to go into port to repair, the necessary expenses incurred in refitting her, so as to enable her to prosecute her voyage, and the amount of wages, port-dues, and provisions expended to accomplish that object, are also the subject of average; and if the master is unable to obtain the money necessary by any other means than by the sale of a part of the cargo, the loss caused to the merchant upon such sale is also the subject of average. If, in consequence of the sacrifice made, the

ship escape the danger which immediately threatens her, but is afterwards wrecked or captured, and the remaining goods, or part of them, are saved or recaptured, these are bound to contribute average towards the loss in the first instance incurred, in proportion to their net value in the hands of the merchant after all expenses of salvage, &c. have been paid.

The things upon which average is payable are, the ship, boats, furniture, &c., but not provisions or ammunition; also all merchandise, to whomsoever belonging, which is on board for the purposes of traffic, but not the covering, apparel, jewels, &c. of parties on board for their own private use. The freight due at the end of the voyage is also subject to average. The goods are to be valued at the price for which they would have sold at their place of destination. If the ship, by reason of what happened when the average was incurred, return to her port of lading, and the average is there settled, the goods are to be valued at the invoice price. The losses incurred by the ship and furniture, &c. are calculated at two-thirds of the price of the new articles rendered necessary to be purchased. The usages of other countries as to all matters connected with average differ in some respects both from those of each other and those of this country. Where the average has been adjusted according to the established law and usage of the country in which the adjustment was made, it is binding upon all the parties to it, unless there be some special contract between them which provides otherwise. [ADJUSTMENT.]

AVOCAT, a French word, derived from the Latin *advocatus*, and corresponding to the English 'counsellor at law.' [ADVOCATE.] From the middle of the fourteenth century the avocats were distinguished into 'avocats plaidans,' who answer to our barristers, and 'avocats consultans,' called also 'juris-consultes,' a kind of chamber-counsel, who do not plead in court, but give their opinion on intricate points of law. Previous to the Revolution the advocates of Dijon, Grenoble, the Lyonnais, Ferez, and Beaujolais were entitled to rank as nobles; in some places the order was freed from the de-

mands of the farmers of the king's taxes. Before 1600 the advocates of Grenoble enjoyed a transmissible nobility; but this privilege was subsequently contested; and in 1756 or 1757 the privileges of the forty gentlemen of whom the order consisted were limited to the *droit de chasse comme les nobles même sans avoir fiefs*. ('Foreign Quarterly Review,' No. 66, p. 352.) Under the old monarchy the avocats were classed, with regard to professional rank, into various categories, such as 'avocats au conseil,' who conducted and pleaded causes brought before the king's council: they were seventy in number, were appointed by the chancellor, and were considered as attached to the king's court; and 'avocats généraux,' who pleaded before the parliaments, and other superior courts, in all causes in which the king, the church, communities, and minors were interested. At first the 'avocats généraux' were styled 'avocats du roi,' and the other barristers who pleaded in private causes were called 'avocats généraux,' but towards the end of the seventeenth or the beginning of the eighteenth century these appellations were changed, the 'avocats du roi' were styled 'avocats généraux,' and three of them were appointed to each superior court, while the counsel who filled the same office before the inferior courts assumed the name of 'avocats du roi.' 'Avocat fiscal' was a law-officer in a ducal or other seigniorial court of justice, answering to the avocat du roi in a royal court. The order of advocates was suppressed by a decree of the 11th September, 1790. The persons who performed the functions of counsel were then termed *hommes de loi*, and any one might act as counsel. Out of six hundred of the ancient advocates, scarcely fifty, it is said, attended the tribunals during the violent period of the Revolution. In 1795 something was done by the French Directory to re-organize the bar, and in December, 1810, another step was taken in the same direction. The Emperor Napoleon had a great aversion to the bar, and when the Legion of Honour was established not a single advocate received the decoration; but they were more favourably treated under the Restoration. In 1827, on the trial of a Neapolitan

priest for a brutal assault on an infant of tender years, the president ordered the bar to leave the court.

At present there are in France 'avocats au conseil du roi,' as formerly; 'avocats généraux,' of whom there are five at the Court of Cassation, or Supreme Court, four at the Cour Royale of Paris, besides substitutes, and two or three at each Cour Royale in the departments. The practising barristers are classed into 'avocats à la Cour de Cassation,' who are fifty in number, and who conduct exclusively all causes before that court; and 'avocats à la Cour Royale,' who plead before the various royal courts. All avocats must be bachelors at law, and must have taken the oath before the Cour Royale. There is a roll of the advocates practising in each court. Candidates are admitted by the Council of Discipline after a probationary term. The members of the Council are elected by the advocates inscribed on the roll. The 'avoués' (attorneys) also plead when the number of advocates is not sufficient for the despatch of business. (*Code des Avocats; Code des Officiers Ministériels; Histoire de l'Ordre des Avocats*, par Bouchier d'Argis.)

AVOIRDUPOIS. [WEIGHTS AND MEASURES.]

AYUNTAMIENTO, JUSTICIA, CONCEJO, CABILDO, REGIMIENTO, are the names given in Spain to the councils of the towns and villages. These councils are in general composed of the corregidor, alcalde, regidores, jurados, and personeros, or hombres-buenos. All these officers, with the exception of the corregidor, who was always appointed by the government, were originally elected every year by the inhabitants of the concejo or commune. To be the head of a family, a native of Spain, and settled in the commune, were the only qualifications required either from an elector or a candidate. The origin of this institution may be traced to the remotest period of Spanish history. (Masdeu, *Historia Crítica*, vols. iv. to ix., more particularly vol. viii. book 3, pp. 33-49.) It existed in the Peninsula under the Romans; and under the Goths it was called the Council of the Præpositus or Villicus—a political and military governor appointed by the

king. The individuals who formed the council were called priores or seniores. In the eleventh and twelfth centuries, the territories which the cruel and devastating wars between the Christians and the Moors had deprived of inhabitants, were again peopled, and the kings of Leon and Castile granted particular *fueros*, or charters, by which many great privileges were bestowed on such as chose to settle in these new colonies. The colonists acknowledged the king as their only lord, and bound themselves by a solemn oath to observe all the laws contained in the fuero, and to pay a certain tribute to the king, called Moneda-Forera, or charter-money. The king likewise was bound by an oath to maintain faithfully all the privileges granted in the fuero, not to defraud the concejo or any of its inhabitants of their property, and to keep them under his protection. Every man in the concejo was a soldier, and was bound to arm himself and to follow the pennon of his alcalde, when legally summoned to the defence of the concejo or of his country. In some of these concejos the king appointed an officer who had the political and military command in the commune, collected the revenues, and watched over the observance of the fuero; but this officer had neither voice nor vote in the ayuntamiento, and was in every other respect subject to the authority of the concejo. These officers were called domini, dominantes, and also seniores. The administration of justice, the levying of taxes, raising of troops, and all the interior policy of the concejo, devolved upon the ayuntamiento. The members of this body were chosen every year by ballot, by the inhabitants of the commune. Whoever solicited a vote, either for himself or for his friends, or endeavoured to bribe the electors by money, or even by the favour of the king, was thereby deprived of the privilege of ever becoming a member of any ayuntamiento. To supply the expenses of the concejo, to provide for the erection of public buildings, the endowment of schools, the construction of roads, and other works of public utility or ornament, every concejo possessed certain property, which was inalienable. This fund was increased by the mulets

imposed on certain criminals by the ayuntamiento. Any individual of that body, who was found guilty of malversation of this property, was obliged to restore double the sum he had misapplied. All the citizens enjoyed equal rights in these concejos: Christians, Moors, and Jews, all had the same privileges. No nobleman was allowed to settle in them, unless he first renounced all the privileges of his class, and became a commoner; nor was he allowed even to build a castle or a palace by which he might be distinguished from the rest of the citizens. If any one attempted to do so, the alcaides were bound by fuero, and under the most severe penalties, to expel him from the concejo. Every individual who resorted to these colonies found in them the most perfect security against oppression; and in some of them, as was the case in Cuenca, he could not be prosecuted for any crime which he might have committed, or even for debts contracted, previous to his settling in the concejo: many accordingly withdrew from the tyrannical rule of the feudal lords, and flocked from every quarter to this seat of liberty.

Such were the immunities enjoyed by these colonies and their consequent state of prosperity, that many barons voluntarily renounced the privileges of their rank to settle in them. Many behetrias, or free cities, which were at liberty to place themselves under the protection of any lord they chose, preferred the patronage of the king, in order to enjoy the same privileges as the concejos. Similar fueros were also granted to such cities as rendered eminent services in the wars against the Moors. In all ordinary cases the ayuntamiento decided alone, but every subject which could interest the whole community was, and is even at this day, particularly in villages, decided in *concejo abierto*, or open council, in which all the citizens in the commune have a voice. When the king ordered anything *contra fuero*, the alcalde, placing the king's order upon his head as a sign of respect, pronounced his veto by the well-known formula of "obedezca y no se cumpla," that is, let it be obeyed and not fulfilled. These ayuntamientos had also the privi-

lege of sending their procuradores, or deputies, to the Cortes, or great assemblies of the nation; and these procuradores formed there the *Brazo de las Universidades*, or the House of Commons. This *Brazo* was always the most powerful auxiliary of the crown, and the most effective check against the pretensions of the barons in the times of feudalism. During the disturbed minorities of Ferdinand IV. and Alonso IX. of Castile, the municipal constitution of Spain suffered greatly. The kings and the feudal lords, always ready to take every advantage to forward their own interest, and to encroach upon the liberties of the nation, availed themselves of the pretext of disturbances in the elections of the ayuntamientos, and the king usurped the right of appointing their members in some concejos. The Cortes constantly remonstrated against this abuse, and several laws were enacted to prevent its continuance. Another innovation introduced by the kings was that of appointing *corregidores*, or *jueces asalariados*, salaried judges, to administer justice in the concejos, in the name of the king, by which measure he deprived the ayuntamiento of the judicial power. Under John II. of Castile, in the fifteenth century, on account of some dispute in the city of Toledo, it was established that the ayuntamiento of that city should consist of sixteen regidores—eight for the nobility, and eight for the commons, all appointed by the king, and holding their offices for life. "This abuse," says Mariana, "led to another—that of selling these offices, to the great detriment of the common weal, and thus institutions which are good in their origin and tendency, are often turned into evil." The nation continuing its remonstrances against this abuse, a law was enacted about 1540 (*Recopilacion*, book vii. title 3rd, law 25th), by which it was ordered that no town having a population under 500 vecinos (about 2000 souls) should have an ayuntamiento appointed by the government. Under the profligate government of Philip IV. the municipal offices were shamefully sold to the highest bidder in every large city; but in the small towns and villages where these offices offered little or no

inducement, they continued to be elective. Some towns bought the privilege of electing their municipal officers, and were called on that account *concejos redimidos*, or redeemed councils. Under the presidency of Count Aranda it was established that two officers named *personeros diputados del comun*, or *hombres-buenos*, should be elected in every town to protect the interests of the people in the ayuntamiento. The Cortes of 1812 abolished all the abuses, and all the towns were restored to their primitive right of electing their municipal officers. Ferdinand VII., on his return from France, in 1814, rescinded everything which the Cortes had done, and restored the ayuntamientos perpetuos.

Notwithstanding the continual efforts of the government to destroy this salutary institution, so contrary to that centralizing system first established by Napoleon, and unfortunately blindly followed by more than one enlightened nation, it still exists, and has been at all times a check against despotism—feeble indeed, but yet sufficient to have still preserved in the Spanish nation a democratical spirit, which, on all occasions of great national interest, has manifested itself in its fulness. Ignorance of the municipal constitutions of Spain is one of the causes why politicians, both native and foreign, are so frequently deceived in their judgments and calculations relative to Spain, particularly in times of great political excitement. We have seen in our days, not to quote other more remote examples, that when the Spanish government in 1808 deserted the nation, delivering it into the hands of the French; when the nobility, the high clergy, and all the high civil and military functionaries acknowledged the disgraceful transactions of Bayonne, the alcalde of Mostóles (Schepeler, *Histoire de la Révolution d'Espagne*, vol. i. chap. 3, p. 55), an insignificant village in the neighbourhood of Madrid, raised the national standard against the Emperor of the French, and the whole nation flocking round it, exercised in its fulness that portion of the sovereign power which it had always preserved. This ignorance is perhaps one of the reasons why some individuals

have so unjustly accused of dangerous innovations the principles of the constitution of Cadiz, in which however nothing else was contained than doctrines sanctioned by all the local fueros; and no rights were there proclaimed but those which the nation at all times had exercised, and was then actually exercising. (Mariana, *Examen de la Antigua Legislacion de España*; *Recopilacion de las Leyes de estos Reinos*, book vii.; Mariana, *Historia de España*, book xx. chap. 13.)

## B.

**BACHELOR**, an unmarried man. The legislation of the Romans placed unmarried persons (*caelibes*) under certain disabilities, the chief of which were contained in the *Lex Julia et Papia Poppæa*. The original *Lex* was simply called *Julia*, and was passed B.C. 18. (Dion Cassius, liv. 16.) The *Lex Papia et Poppæa*, which was intended as an amendment and supplement to the *Lex Julia*, was passed A.D. 9; and both these *leges* seem to have been considered as one, and they are often referred to under the title of the *Lex Julia et Papia Poppæa*. One object of the *Lex* was to encourage marriage. An unmarried person (*caelebs*), who was in other respects qualified to take a legacy, was incapacitated by this *Lex*, unless he or she married within one hundred days. (Ulpian, *Frag.* xvii. tit. 1.) The law was the same if the whole property (*hereditas*) was left to a *caelebs*. (Gaius, ii. 111, 144, 286.) It was the opinion of the lawyers, that though a *caelebs* could not take directly under a testament, a *caelebs* could take by way of *fidei commissum*, or trust; but the *Senatus-consultum Pegasianum*, which was passed in the time of Vespasian, rendered a *caelebs* equally incapable of taking anything by way of *fidei commissum*. (Gaius, ii. 286.) A testamentary gift, which failed to take effect because the *heres* or legatee was a *caelebs*, was called *Caducum* (and the word was applied to other cases also), something which failed or dropped. In the first instance, such a gift came to those among the *heredes* who had children; and if the *heredes* had no



children, it came to those of the legatees who had children. If there were no such claimants, the Caducum came to the public treasury (*aerarium*). But by a constitution of the Emperor Antoninus Caracalla, the Caducum came to the *Fiscus* or Imperial treasury, instead of the public treasury; the rights of children and parents, however, were reserved. (Ulpian, *Frag.* xvii. tit.) An unmarried man who had attained the age of sixty, and an unmarried woman who had attained the age of fifty, were not subjected to the penalties of the *Lex Julia et Papia Poppæa* as to celibacy, but a *Senatus-consultum Pernicianum* (*Persicianum*), passed in the time of Tiberius, extended the penalties to unmarried persons of both sexes who were above sixty and fifty years old respectively, and it made them for ever subject to the incapacities. However, a *Senatus-consultum Claudianum*, passed in the time of Claudius, mitigated the severity of the *Pernicianum*, in case a man married above the age of sixty, provided he married a woman under fifty, for the Roman law considered a woman under fifty as still capable of procreation. (Ulpian, *Frag.* xvi. tit.; Suetonius, *Claudius*, c. 23.)

The *Lex Julia et Papia Poppæa* also imposed incapacities on *orbi*, that is, married persons who had no children from the age of twenty-five to sixty for a man, and twenty to fifty for a woman. Childless persons who came within the terms of the *Lex* lost one half of any *hereditas* or legacy; and what they could not take became *Caducum*. The *Lex* also gave direct advantages to persons who had children, which subject belongs to the head of MARRIAGE, as well as the history of its enactment. The original object of this Roman law, was perhaps only to encourage marriage, but it was afterwards used as a means of raising revenue.

In the preceding exposition of the *Lex Julia et Papia Poppæa*, it has been assumed that the provisions above enumerated applied both to males and females. The word *caelebs*, indeed, seems to be applied only to males, and the Latin term for an unmarried woman is *Vidua*, which means any woman who has not a husband. But the expression of Ulpian

(xvi. tit. 3), "*Qui intra sexagesimum vel quæ intra quinquagesimum annum neutri legi (the Julia, or Papia Poppæa) paruerit.*" &c., shows that the provisions applied both to males and females. The word *caelebs* would not be used in the enactments of the *Lex*, but the phrase would be "*Qui Quæve,*" &c. That the *Lex* applied to women also, appears from other evidence. (*Cod.* viii. tit. 57.) Under the Republic there were also penalties on celibacy, and legal inducements to marriage, which are mentioned in the speech which Dion Cassius (lvi. 57) puts into the mouth of Augustus. The censors also are said to have had the power of imposing a penalty called *Aes Uxorium*, wife-money, on men who were unmarried. (Festus, v. "*Uxorium.*") It was always a part of the Roman policy to encourage the procreation of children; the object of the English law imposing extraordinary payments on bachelors, and relieving to a certain extent married persons with children, was apparently to raise money, though a certain vague notion that marriage should be encouraged seems also to have occurred to the law-maker. A constitution of Constantine (*Cod.* viii. tit. 58) relieved both unmarried men and women from the penalties imposed on *caelibes* and *orbi*, and placed them on the same footing as married persons. This change was made to favour the Christians, many of whom abstained from marriage from religious motives.

Not only bachelors, but widowers have been unequally taxed in this country; and there is more than one instance within the last sixty years, in which persons have been favoured by special exemptions, or have been charged less on account of the number of their children. In 1695 an act was passed (6 & 7 Will. III. c. 6) entitled "*An Act for granting to his Majesty certain rates and duties upon marriages, births, and burials, and upon bachelors and widowers, for the term of five years, for carrying on the war against France with vigour.*" Bachelors above the age of twenty-five, and widowers without children, paid one shilling yearly, and further according to their rank.

Thus for a bachelor duke the tax was 12*l.*, and other ranks in proportion. An esquire was charged thirty-five shillings a-year, and a person of the rank of gentleman five shillings. Persons possessed of real estate of 50*l.* a-year, or personal property of 600*l.* value, paid five shillings. A supplementary act was passed two or three years afterwards (9 Will. III. c. 32), to prevent frauds in the collection of the taxes imposed by the former act, but the tax was allowed to expire in 1706. In 1785, when Mr. Pitt proposed a tax on female servants, he exempted persons who kept only one servant, and who had two or more lawful children or grandchildren under the age of fourteen living in the house with them. But to make up for the deficiency he proposed that the tax on servants should be higher for bachelors than for others; and he stated that the idea of this tax was borrowed from Mr. Fox. (25 Geo. III. c. 43.) This differential rate has been continued to the present time, and the number of servants charged at the higher rate in 1842 was 11,831, or rather more than one-tenth of the whole number charged. Roman Catholic clergymen are exempt from additional duty. When the income tax was imposed by Mr. Pitt, in 1798, deductions were allowed on account of children, and an abatement was made of 5*l.* per cent. to a person with children, when the income was above 60*l.* and under 400*l.*; and other rates of abatement were allowed according to the amount of income and the number of children; this indulgence extended to incomes of 5000*l.* a-year and upwards.

There does not appear to be a tax on bachelors in any country in Europe. In the city of Frankfort an income tax is paid by journeymen who work in the city, "if they are foreigners and not married."

BAILIFF signifies a keeper or superintendent, and is directly derived from the French word *bailli*, which appears to come from *ballivus*, and that from *bagalus*, a Latin word signifying generally a governor, tutor, or superintendent, and also designating an officer at Constantinople who had the education and care of the Greek emperor's sons. (Du cange,

*Glossary*.) The word *Baiolus*, which seems to be the same as *Bagalus*, is used by the Roman classical writers to signify a porter, one who carries any burden on his back. (Facciolati, *Lex*.) The French word *Bailli* is thus explained by Richelet (*Dictionnaire*, &c.): "Bailli [Praetor Peregrinus]. He who in a province has the superintendence of justice, who is the ordinary judge of the nobles, who is their head for the *ban* and *arrière ban*, and who maintains the right and property of others against those who attack them. Messieurs of the Académie write the word with an *f*, *Baillif*." Richelet also mentions two classes of *Baillis* in the order of Malta. All the various officers who are called by this name, though differing as to the nature of their employments, seem to have some kind of superintendence intrusted to them by their superior. The sheriff is called the King's bailiff, and his county is his bailiwick. The keeper of Dover Castle is called the bailiff; and the chief magistrates of many ancient corporations in England had this name. Amongst the principal officers of corporate towns to which the inquiries of the Corporation Commissioners extended in 1835, there were 120 officers called bailiffs, and 45 inferior officers with the same designation, besides 29 water-bailiffs. But the chief functionaries to whom the name is applied in England are the bailiffs of sheriffs, the bailiffs of liberties or franchises, and the bailiffs of lords of manors.

1. *Bailiffs of Sheriffs* were anciently appointed in every hundred, to execute all process directed to the sheriff, to collect the King's fines and fee-farm rents, and to attend the justices of assize and jail delivery: they are called in the old books bailiffs errant. There is now a certain number of bailiffs appointed by the sheriff in his county or bailiwick, who are commonly called *bound bailiffs*, from their entering into a bond to the sheriff in a considerable penalty for their due and proper execution of all process which the sheriff intrusts to them to execute, whether against the person or the goods of individuals. These are called *common bailiffs*; but the sheriff may and often does, at the request of the suitor or

otherwise, intrust the execution of process to a person named merely for the occasion, who is called a *special* bailiff. The bailiff derives his authority from a warrant under the hand and seal of the sheriff: and he cannot lawfully arrest a party till he receives such warrant. It is a contempt of the court from which process issues, to hinder the bailiff in executing it; and when a party is taken by the bailiff, he is legally in the custody of the sheriff. An arrest may be made by the bailiff's follower; but the bailiff must in such case be at hand and acting in the arrest. The bailiff is forbidden by the Lord's Day Act, 29 Car. II. c. 7, to execute process on Sunday; and he is not authorized to break open an outer door to make an arrest under civil process, or to seize goods; but if the outer door is open, he may, in general, break open inner doors in execution of the process. If a bailiff misdemean himself grossly in the execution of process, as if he use unnecessary violence or force, or extort money from prisoners, or embezzle money levied, he will be punished by attachment from the court from whence the process issues.

2. *The bailiff of a franchise or liberty* is one who has the same authority granted to him by the lord of a liberty as the sheriff's bailiff anciently had by the sheriff. These liberties are exclusive jurisdictions, which still exist in some parts of the kingdom (as the honour of Pontefract, in Yorkshire, the liberty of Gower in Gloucestershire and adjoining counties), in which the King's writ could not formerly be executed by the sheriff, but only by the lord of the franchise or his bailiff. These districts proving inconvenient, the statute of Westminster the 2nd., c. 29, provided, that if the bailiff, when commanded to execute a writ within the franchise, gave no answer, a writ, with a clause of *non omittas*, should issue, authorizing and commanding the sheriff himself to enter the franchise and execute the writ; and it is now the practice in every case to insert this clause in the writ in the first instance, which enables the sheriff at once to execute it in the franchise. If, however, the party who sues out the writ neglects to insert

this clause, the sheriff is not bound to enter the franchise; though if he do enter it, the execution will not be invalid: but if a sheriff's bailiff, in executing such a writ within a franchise, is resisted by the party to be taken, and is killed, it is not murder; for the bailiff is committing a trespass in consequence of the clause of *non omittas* not being inserted in the writ.

3. *Bailiffs of manors* are stewards or agents appointed by the lord (generally by an authority under seal) to superintend the manor; collect fines and quitrents; inspect the buildings; order repairs, cut down trees; impound cattle trespassing; take an account of wastes, spoils, and misdemeanors in the woods and demesne lands; and do other acts for the lord's interest. Such a bailiff can bind his lord by acts which are for his benefit, but not by such as are to his prejudice, without the lord's special authority.

An act was passed in 1844 for regulating the bailiffs of inferior courts (7 & 8 Vict. c. 19), the preamble of which states that—"whereas courts are holden in and for sundry counties, hundreds and wapentakes, honours, manors, and other lordships, liberties and franchises, having, by custom or charter, jurisdiction for the recovery of debts and damages in personal actions, and in many places great extortion is practised under colour of the process of such courts:" and it is then enacted that bailiffs are to be appointed by the judge of the court; and remedies are adopted to prevent misconduct on the part of such bailiffs.

(Bacon's *Abridgment*, tit. "Bailiff," 7th ed.; Tomline's *Law Dictionary*, same title.)

BAILIWICK, from the French *bailli*, and the Saxon *wic*, the dwelling-place, or district of the bailiff, signifies either a county which is the bailiwick of the sheriff, as bailiff of the king, and within which his jurisdiction and his authority to execute process extend; or it signifies the particular liberty or franchise of some lord who has an exclusive authority within its limits to act as the sheriff does within the county. The corresponding French word is *Bailliage*. [BAILIFF; SHERIFF.]

BAILLIAGE, a French term equivalent with bailiwick, a district or portion of territory under the jurisdiction of an officer called a bailiff. This term was more especially appropriated to certain sub-governments of Switzerland, which at the time Coxe wrote his travels were of two sorts: the one consisting of certain districts into which all the aristocratical cantons were divided, and over which a particular officer called a bailiff was appointed by the government, to which he was accountable for his administration; the other composed of territories which did not belong to the cantons, but were subject to two or more of them, who by turns appointed a bailiff. The officer of this last sort of bailliage, when not restrained by the peculiar privileges of certain districts, had the care of the police, and under certain limitations the jurisdiction in civil and criminal causes. He also enjoyed a stated revenue, arising in different places from various duties and taxes. In case of exaction or mal-administration an appeal lay to the cantons to which the particular bailliage belonged. (Coxe's *Trav. in Switz.* 4to. Lond. 1774, vol. i. p. 30.) These latter bailliaiges anciently formed part of the Milanese. Their names were—Mendrisio, Balerna, Locarno, Lugano, and Val-Maggia. Uri, Schweiz, and Underwalden possessed the three bailliaiges, Bellinzona, Riviera, and Val-Brenna, all which had also been dismembered from the Milanese. The chief of these bailliaiges were ceded to the cantons, in 1512, by Maximilian Sforza, who was raised to the ducal throne by the Swiss, after they had expelled the troops of Louis XII. and taken possession of the duchy. Francis I., successor of Louis, having recovered the Milanese, and secured his conquest by the victory of Marignano, purchased the friendship of the cantons by confirming their right to the ceded territory; a right which the subsequent dukes of Milan were too prudent to dispute. They were finally confirmed by the house of Austria. (Ibid. vol. ii. pp. 170, 418.) In 1727 the Italian bailiwicks were surrendered, with the cantons of Switzerland, to the French. (Planta's *Hist. of the Helvet. Confederacy*, 8vo. edit. vol. iii. p. 380.)

In 1802, when Bonaparte, as First Consul of France, remodelled the constitution of Switzerland, and increased the ancient number of its cantons to eighteen, that of Tessin was formed out of the Italian bailiwicks; an arrangement which was afterwards confirmed by the treaty of Paris, 30th of May, 1814, and recognised in the Helvetic Diet of 19th of March, 1815. (See the *Moniteur* for the 20th of February, 1803, and 22nd of May, 1815.)

BALANCE OF POWER. The notion upon which this phrase is founded appears to be the following:—When a number of separate and sovereign states have grown up beside each other, the entire system which they constitute may be conceived to be evenly balanced, so long as no single state is in a condition to interfere with the independence of any of the rest.

But as in such a system of states there are generally a few which may be considered as leading powers, it is by these being made to counterpoise each other that the balance is principally maintained. It is in this way only that the safety of the smaller states can be secured. Thus, in the ancient world, after the destruction of Carthage, there was no power strong enough to cope with Rome; and the consequence was, that the countries that yet remained sovereign powers successively fell under her dominion.

The subjugation of nearly the whole of India by Great Britain, and the establishment of the late widely-extended empire of France on the continent of Europe, may be quoted as other examples of the effect that results from the destruction of what is termed the balance of power.

On the contrary, so long as the power of one great state (however far surpassing in extent of territory, or other resources of strength and influence, many of those in its neighbourhood) can be kept in check, or, in other words, balanced by that of another, the independence of the smaller states is secured against both. Neither will be disposed to allow its rival to add to its power by the conquest or absorption of any of these minor and otherwise defenceless members of

the system. And in this way it happens that each state, whether great or small, has an interest and a motive to exert itself in the preservation of the balance.

This policy is so obvious, that it must have been acted upon in all ages, by every assemblage of states, so connected or situated as to influence one another. There may have been less or more of skill or wisdom in the manner of acting upon it, or the attempt to act upon it may have been more or less successful, in different cases; but to suppose that its importance had been overlooked by any states that ever existed in the circumstances described, would be to suppose such states to have been destitute of the instinct of self-preservation.

Mr. Hume (*Essays*, part ii. essay 7th) has shown conclusively, in opposition to the opinion sometimes expressed, that ancient politicians were well acquainted with the principle of the balance of power, although, as far as appears, they did not designate it by that name. "In all the politics of Greece," he observes, "the anxiety with regard to the balance of power is apparent, and is expressly pointed out to us even by the ancient historians. Thucydides (lib. i.) represents the league which was formed against Athens, and which produced the Peloponnesian war, as entirely owing to this principle; and after the decline of Athens, when the Thebans and Lacedæmonians disputed for sovereignty, we find that the Athenians (as well as many other republics) always threw themselves into the lighter scale, and endeavoured to preserve the balance. They supported Thebes against Sparta, till the great victory gained by Epaminondas at Leuctra: after which they immediately went over to the conquered—from generosity, as they pretended, but, in reality, from their jealousy of the conquerors." "Whoever," he adds, "will read Demosthenes' oration for the Megalopolitans, may see the utmost refinements on this principle that ever entered into the head of a Venetian or English speculatist." He afterwards quotes a passage from Polybius (i. c. 83), in which that writer states that Iliero, king of Syracuse, though the ally of Rome, yet sent assistance to the Car-

thaginians, during the war of the auxiliaries, "esteeming it requisite, both in order to retain his dominions in Sicily, and to preserve the Roman friendship, that Carthage should be safe; lest by its fall the remaining power should be able, without contest or opposition, to execute every purpose and undertaking. And here he acted with great wisdom and prudence; for that is never on any account to be overlooked; nor ought such a force ever to be thrown into one land as to incapacitate the neighbouring states from defending their rights against it." "Here," remarks Mr. Hume, "is the aim of modern politics pointed out in express terms."

It must be confessed, however, that the preservation of the balance of power was never so distinctly recognized and adopted as a principle of general policy in ancient as it has been in modern times. The systematic observance of the principle of the balance, subsequently to the subversion of the Roman empire, may be first traced in the conduct of the several Italian republics. It appears clearly to have formed part of what may be called the public law of these rival states from about the commencement of the fifteenth century. From the commencement of the next century it became an active principle in the general policy of Europe.

The leading rule by which it has ever since then been attempted to maintain the balance of power, may be stated to be the opposing of every new arrangement which threatens either materially to augment the strength of one of the greater powers, or to diminish that of another. Thus, first Austria, and afterwards France, have been the great objects of the jealousy and vigilance of the other states of Europe. While the power of the Germanic Empire was united in the person of Charles V. to the kingdom of Spain, that prince was naturally regarded as formidable both by France and England. If he could have effected a permanent alliance with either of these powers, or could have even induced one of them to stand aside and acquiesce, there can be little doubt that he would have taken that occasion to attempt to crush the other. The vast possessions of Philip II. appeared to call

for the same watchfulness and opposition, in regard to his projects, from all other states that valued their independence. In later times, the ambition of Louis XIV. of France, and the scheme concerted under his management to unite in one family the crowns of France and Spain, drew upon him, in like manner, the general hostility of Europe. There can be no doubt that, if the designs of this king had not been thus resisted, France would have become, a century earlier than it did, the mistress of the continent, and the independence of all other nations would, for a time at least, have been extinguished. The liberties of England, as founded upon the Revolution of 1688, could, in such circumstances, certainly not have been maintained.

It is nothing to the purpose to argue that the maintenance of the balance of power has often involved the nations of Europe in contests with each other, which, if they had disregarded that principle, would not have taken place; at least, not at the time. It may be better that all nations should be subject to one, than that each should preserve its independence; but that is not the question here: if nations will be sovereign and independent, they must fight for their sovereignty, as men must do for any other possession, when it is attacked.

But some persons appear to think that we in Great Britain have nothing to do with the maintenance of the so-called balance of power in Europe, because we live not on the continent, but in an island by ourselves. If the whole continent were reduced under subjection to a single despot, we certainly should not long remain independent. The protection which we now possess from the sea with which we are surrounded would, in the case supposed, certainly become insufficient.

The maintenance of the principle of the balance of power, however, although it has no doubt given occasion to some wars, has probably prevented more. Its general recognition has, to a certain extent, united all the states of Europe into one great confederacy, and habituated each of the leading powers to the expectation of a most formidable resistance in case of its making any attempt to encroach

upon its neighbours. It is no sufficient objection to say that such attempts have been actually made. They would have been made much oftener had there been no such general understanding as we have spoken of. It must have operated as a great discouragement and check to the schemes of ambitious potentates to know that, from the first consolidation of the modern European system down to the partition of Poland in 1772—a period, we may say, of three centuries—not the smallest independent state had suffered extinction, or had been even very seriously curtailed of power or territory, notwithstanding all the wars for the purpose of conquest and aggrandizement that had been waged during that long interval.

**BALANCE OF TRADE.** In a tract published in 1677, called ‘England’s Great Happiness,’ which is quoted by Mr. McCulloch in the introductory discourse to his edition of Smith’s ‘Wealth of Nations,’ is the following dialogue between “Complaint” and “Content.”—

“*Complaint.* What think you of the French trade, which draws away our money by wholesale? Mr. Fortrey gives an account that they get 1,600,000*l.* a year from us.

“*Content.* ’Tis a great sum; but, perhaps, were it put to a vote in a wise council, whether for that reason the trade should be left off, ’twould go in the negative. I must confess I had rather they’d use our goods than our money; but if not, I would not lose the getting of ten pounds because I can’t get an hundred. . . . I’ll suppose John-a-Nokes to be a butcher, Dick-a-Styles to be an exchange man, yourself a lawyer,—will you buy no meat or ribands, or your wife a fine Indian gown or fan, because they will not *truck* with you for indentures which they have need of? I suppose no; but if you get money enough of others, you care not though you give it away in specie for these things. I think ’tis the same case.”

The year after this sensible and conclusive passage was written, an act was passed “to prohibit the importation of French goods, as highly detrimental to this kingdom.” This act was to continue in force to the end of the then next session

of Parliament; and no session having been held during the remainder of the reign of Charles II., the prohibition continued until the accession of James II., who procured the repeal of the act in 1685; but the renewal of the prohibition was one of the first consequences of the revolution of 1688. From 1685 to 1688, says Anderson, this country was nearly "beggared" by an inundation of French commodities. In the reign of William III. the legislature voted the French trade a nuisance, and made the prohibition perpetual. This was to enforce what was called a favourable balance of trade. The notion, we thus see, was not a vague theory, but a mischievous rule of practice, which even now some people regard with admiration, and would make a part of our commercial code. They would have the nation to be the lawyer who wants to *truck* his indentures with the wine-merchant; but because the wine-merchant will not have the indentures, the lawyer ought, according to this, to go without the wine, although he might *sell* the indentures to the exchange-man, who would thus furnish him with the specie for buying the wine.

The balance of trade, as understood by those who adopt the theory, is the difference between the aggregate amount of a nation's exports and imports, or the balance of the particular account of the nation's trade with another nation. If the account shows that the imports (valued in money) exceed the exports (valued also in money), the balance is said to be against the nation; if the exports exceed the imports, the balance is said to be in the nation's favour. This mode of estimating the so-called balance is evidently founded on the assumption that the precious metals constitute the wealth of a country;—when the imports from any country, as valued in money, exceed the exports to the same, also valued in money, the exporting country must part with some of its precious metals in payment; and, according to the doctrine, must so far lose by the trade. A nation, such for instance as our own, has not the means of keeping very clear accounts of these matters, for we have an

arbitrary standard of value, called *official*, which has been in use for about a century and a half, and which *official value* is an ingenious device for perplexing many otherwise simple questions, and for keeping up many absurd prejudices. Now, taking these official or unreal values in connexion with the device of the balance of trade, we find that during the year 1843 the United Kingdom gained some forty-eight millions sterling by a favourable balance; for its imports, or the goods which it received from foreigners, amounted to sixty-five millions, whilst its exports, or the goods it sent to foreigners, amounted to one hundred and thirteen millions, official valuation. In 1842 the same sort of excess amounted to fifty-two millions, and in 1841 to forty-nine millions. If the favourable balance of these three years were anything but a fiction, it is manifest that the nation would, in these three years only, have accumulated specie to the extent of the favourable balance, and this would amount to the sum of eighty-eight millions sterling. But, further, the same favourable balance has been going on for the last half-century, or longer; and the result would be, that all the specie in the world would at the present time be locked up in this island, and that the balance of forty-eight millions in 1843 would only be a small addition to the heap. Such a result is impossible, for bullion is as much a commodity for sale as corn, and is consequently as generally exchanged. [BULLION.] But if this result were possible, and a nation resolving to sell only for specie, as the Chinese affect to do with regard to tea, could have the power of selling only for specie, this power of turning all its goods to gold, like the same power bestowed upon the wise king Midas, would confer the privilege of being without food, and clothes, and every worldly comfort upon the unhappy inhabitants of such a nation. The truth is, that no commerce is of any value to a country except as it supplies the people of that country with foreign productions, which they either cannot produce at home, or which are produced cheaper and better abroad. The exchanging of the surplus produce of one

country for the surplus produce of another country is the object of all foreign commerce. The profit of the individual merchant is the moving force which impels the machinery of this commerce, but the end is that each country may consume what it would otherwise go without. In this point of view, every country is a gainer by its foreign commerce; and if this gain could be estimated by figures, every country which exchanges its products with another country would have a favourable balance of trade: for both individuals and nations exchange that which they do not want for other things that they do want; and when both parties continue to carry on such exchange, it is clear that both are gainers. Which gains most is a question that cannot be settled, and would be of no use if it could be settled.

But gold and silver are in one sense the most valuable products, because they have a universal value, and a nation which in its trade can get all it wants and gold too, will be richer than other nations. It will always have a great quantity of a material that is commercially more valuable than corn or manufactured articles. England has received a large part of its precious metal thus, in which it abounds above all countries; and this is invested in articles of use and ornament, and also gives employment to a vast mass of people, who receive for their wages a commodity of universal value. It also enables us to base our paper-money on the sound principle of convertibility for the precious metal.

BALLAST (Danish, *Baglast*; German, Dutch, and Swedish, *Ballast*; French, *Lest*; Italian, *Savorra*; Spanish, *Lastre*; Portuguese, *Lastro*; Russian, *Balast*), a term used to denote any heavy material placed in a ship's hold with the object of sinking her deeper in the water, and of thereby rendering her capable of carrying sail without danger of being over-set. Ships are said to be in ballast when they sail without a cargo, having on board only the stores and other articles requisite for the use of the vessel and crew, as well as of any passengers who may be proceeding with her upon the voyage. In favour of vessels thus circumstanced it is

usual to dispense with many formalities at the custom-houses of the ports of departure and entry, and to remit the payment of certain dues and port charges which are levied upon ships having cargoes on board.

A foreign vessel proceeding from a British port may take on board chalk as ballast; and by 3 & 4 Wm. IV. c. 52, shall not be considered as other than a ship in ballast in consequence of her having on board a small quantity of goods of British manufacture for the private use of the master and crew, and not by way of merchandise; but such goods must not exceed in value 20*l.* for the master, 10*l.* for the mate, and 5*l.* for each of the crew (§ 87). The masters of ships clearing out in ballast are required to answer any questions put to them by authority of the custom-house touching the departure and destination of such ships (§ 80).

Regulations have at various times been made in different ports and countries determining the modes in which ships may be supplied with ballast, and in what manner they may discharge the same; such regulations being necessary to prevent injury to harbours. It has likewise been sometimes attempted to convert the supply of materials for ballast into a monopoly. In vol. xx. of Rymer's *Fœdera*, p. 93, of the year 1636, we find a proclamation by King Charles I., ordering "that none shall buy any ballast out of the river Thames but a person appointed by him for that purpose," and this appointment was sold for the king's profit. Since that time, the soil of the river Thames from London Bridge to the sea has been vested in the corporation of the Trinity House, and a fine of 10*l.* may be recovered from any person for every ton of ballast which he may take out of the river, within those limits, without the authority of that corporation. Ships may take on board "land ballast" from any quarries or pits east of Woolwich, upon paying one penny per ton to the Trinity House. For river ballast, the corporation are authorized by Act of Parliament (3 Geo. IV. c. 111) to make certain charges. The receipts of the Trinity Corporation from this source were 33,591*l.* in 1840, and their expenses were 31,622*l.* The ballast of all



ships or vessels coming into the Thames must be unladen into a lighter, and if any ballast be thrown into the river, the master of the vessel whence it is thrown is liable to a fine of 20*l.*: some regulation similar to this is usually enforced in every port. (Hume's *Laws of the Customs*; *Report of Committee of House of Lords on Lights and Harbour Dues.*)

#### BALLOT. [VOTING.]

BAN, a word found in many of the modern languages of Europe in various senses. But as the idea of "publication" or "proclamation" runs through them all, it is probable that it is the ancient word *ban* still preserved in the Gaelic and the modern Welsh in the simple sense of "proclaiming."

As a part of the common speech of the English nation, the word is now so rarely used that it is put into some glossaries of provincial or archaical words, as if it were obsolete, or confined to some particular districts or particular classes. Yet, both as a substantive and a verb, it is found in some of our best writers; among the poets, Spenser, Marlowe, and Shakspeare; and among prose-writers, Knolles and Hooker. By these writers, however, it is not used in its original sense of "proclamation," but in a sense which it has acquired by its use in proclamations of a particular kind; and it is in this secondary sense only that it now occurs in common language, to denote cursing, denouncing woe and mischief against one who has offended. A single quotation from Shakspeare's tale of 'Venus and Adonis' will show precisely how it is used by writers who have employed it, and by the people from whose lips it may still sometimes be heard:

All swollen with chafing, down Adonis sits,  
*Banning* the boisterous and unruly beast.

The improvement of English manners having driven out the practice, the word has nearly disappeared. But in the middle ages the practice was countenanced by such high authority, that we cannot wonder at its having prevailed in the more ordinary ranks and affairs of life.

When churches and monasteries were founded, writings were usually drawn up, specifying with what lands the founder and other early benefactors endowed

them; and those instruments often conclude with imprecatory sentences in which torments here and hereafter are invoked on any one who should attempt to divert the lands from the purposes for which they were bestowed. It seems that what we now read in these instruments was openly pronounced in the face of the church and the world by the donors, with certain accompanying ceremonies. Matthew Paris, a monk of St. Albans, who has left one of the best of the early chronicles of English affairs, relates that when King Henry III. had refounded the church of Westminster, he went into the chapel of St. Catherine, where a large assembly of prelates and nobles was collected to receive him. The prelates were dressed in full pontificals, and each held a candle in his hand. The king advanced to the altar, and laying his hand on the Holy Evangelists, pronounced a sentence of excommunication against all who should deprive the church of any thing he had given it, or of any of its rights. When the king had finished, the prelates cast down the candles which they held, and while they lay upon the pavement, smoking and stinking (we use the words of the author who relates the transaction), the Archbishop of Canterbury said aloud, "Thus, thus may the condemned souls of those who shall violate or unfavourably interpret these rights be extinguished, smoke, and stink:" when all present, but the king especially, shouted out "Amen, Amen."

This, in the English phrase, was the *banning* of the middle ages. Nor was it confined to ecclesiastical affairs. King Henry III., in the ninth year of his reign, renewed the grant of Magna Charta. In the course of the struggle which was going on in the former half of the thirteenth century between the king and the barons, other charters of liberties were granted. But for the preservation of that which the barons knew was only extorted, the strongest guarantee was required: and the king was induced to preside at a great assembly of nobles and prelates, when the archbishop pronounced a solemn sentence of excommunication against all persons of whatever degree who should violate the charters. This was done in

Westminster Hall, on the 3rd of May, 1253. The transaction was made matter of public record, and is preserved in the great collection of national documents called Rymer's *Fœdera*.

But besides these general *bannings*, particular persons who escaped from justice or who opposed themselves to the sentence of the church, were sometimes *banned*, or placed under a *ban*. In the history of English affairs one of the most remarkable instances of this kind is the case of Guido de Montfort. This Guido was the son of Simon de Montfort, earl of Leicester, and grandson of King John. In the troubles in England, in which his father lost his life, no one had been more active in the king's service than Henry of the Almaine, another grandson of King John, and the eldest son of Richard, that king's younger son, who had been elected King of the Almains. This young prince, being at Viterbo in Italy, and present at a religious service in one of the churches of that city, was suddenly assaulted by Guido de Montfort, and slain upon the spot. A general detestation of the crime was felt throughout Europe. Dante was placed the murderer in the *Inferno* :—

He in God's bosom smote  
The heart still reverence on the banks of Thames.

The murderer escaped. Among the rumours of the time, one was that he was wandering in Norway. This man the pope placed under a *ban*; that is, he issued a proclamation requiring that no person should protect, counsel, or assist him; that no person should hold any intercourse with him of any kind, except, perhaps, some little might be allowed for the good of his soul; that all who harboured him should fall under an interdict; and that if any person were bound to him by an oath of fidelity, he was absolved of the oath. This was promulgated throughout Europe. A papal bull in which the proclamation is set forth still exists among the public records in the chapter-house at Westminster. A copy of it is in Rymer's *Fœdera*. The pope uses the very expression *forbannimus*: "*Guidonem etiam forbannimus.*"

This species of *banning* is what is meant when we read of persons or cities being placed under the *ban of the empire*,

a phrase not unfrequently occurring in writers on the affairs of Germany. Persons or cities who opposed themselves to the general voice of the confederation were by some public act, like those which have been described, cut off from society, and deprived of rank, title, privileges, and property.

It is manifest that out of this use of the word has sprung that popular sense in which now only the word is ever heard among us, as well as the Italian *bandire*, French *bannir*, and the English *banish* [BANISHMENT.]

In some parts of England, before the Reformation, an inferior species of *banning* was practised by the parish priests. "In the Marches of Wales," says Tyndal, in his work against the Romish Church, entitled *The Obedyence of a Christen Man*, 1534, "it is the manner, if any man have an ox or a cow stolen, he cometh to the curate and desireth him to curse the stealer; and he commands the parish to give him, every man, God's curse, and his; 'God's curse and mine have he,' sayeth every man in the parish." Stow relates that, in 1299, the dean of St. Paul's accused at Paul's Cross all those who had searched in the church of St. Martin in the Fields for a hoard of gold. (*London*, p. 333.) Tyndal argues against the practice, as he does against the excommunicatory power in general. Yet something like it seems to be still retained in the Communion Service of the English Church.

In France the popular language has not been influenced by this application of the word *ban* to the same extent with the English. With them the idea of *publication* prevails over that of *denouncement*, and they call the public cry<sup>by</sup> which men are called to a sale of merchandise, especially when it is done by a beat of drum, a *ban*. In time of war a proclamation through the ranks of an army is the *ban*. In Artois and some parts of Picardy the public bell is called the *ban-cloque*, or the *cloche à ban*, as being rung to summon people to their assemblies. When those who held of the king were summoned to attend him in his wars, they were the *ban*, and tenants of the secondary rank the *arrière-ban*; and out of this

feudal use of the term arose the expressions *four à ban*, and *moulin à ban*, for a lord's bakehouse, or a lord's mill, at which the tenants of a manor (as is the case in some parts of England) were bound to bake their bread or to grind their corn. The *banlieue* of a city is a district around it, usually, but not always, a league on all sides, through which the proclamation of the principal judge of the place has authority. A person submitting to exile is said to *keep his ban*, and he who returns home without a recall *breaks his ban*.

The French use the word as the English do, when they speak of the *ban*, or, as we speak and write it, the *banns* of marriage. This is the public proclamation which the law requires of the intention of the parties named to enter into the marriage covenant. The law of the ancient French and of the English church is in this respect the same. The proclamation must be made on three successive Sundays in the church, during the time of the celebration of public worship, when it is presumed that the whole parish is present.

The intent of this provision is twofold: 1. To prevent clandestine marriages, and marriages between parties not free from the marriage contract, parties within the prohibited degrees of kindred, minors, or excommunicates; and, 2. to save the contracting parties from precipitancy, who by this provision are compelled to suffer some weeks to pass between the consent privately given and received between themselves and the marriage. Both these objects are of importance, and ought to be secured by law. The *ban*, or *banns*, may, however, be dispensed with. In that case a licence is obtained from some person who is authorized by the bishop of the diocese to grant it, by which licence the parties are allowed to marry in the church or chapel of the parish or parochial chapel in which either of them resides, in which marriages are wont to be celebrated, without the publication of banns. The law, however, takes care to ensure the objects for which the publication of banns was devised, by requiring oaths to be taken by the party applying for the licence, and certificates of consent of

parents or guardians in the case of minors. Special licences not only dispense with the publication of banns, but allow the parties to marry at any convenient time or place. These are granted only by the Archbishop of Canterbury, in virtue of a statute made in the twenty-fifth year of King Henry VIII., entitled an act concerning Peter-pence and dispensations.

It is not known when this practice began, but it is undoubtedly very ancient. Some have supposed that it is alluded to in a passage of Tertullian. Among the innovations introduced in France during the time of the first Revolution, one was to substitute for this oral publication a written announcement of the intention, affixed to the door of the town-hall, or in some public place, during a certain time. But when it is considered how liable these bills are to be torn down or defaced, and the questions which may arise in consequence, it would seem that it is not a mode which there is much reason to prefer to that which has so long been established in Christian nations.

**BANISHMENT** (from the French *Bannissement*), expulsion from any country or place by the judgment of some court or other competent authority.

The term has its root in the word *ban*, a word of frequent use in the middle ages, which has the various significations of a public edict or interdict, a proclamation, a jurisdiction and the district within it, and a judicial punishment. Hence a person excluded from any territory by public authority was said to be banished—*bannitus*, in *banum missus*. (Ducange, *voc. Bannire, Bannum*; Pasquier, *Recherches*, pp. 127, 732.) [BAN.]

As a punishment for crimes, compulsory banishment is unknown to the ancient unwritten law of England, although voluntary exile, in order to escape other punishment, was sometimes permitted. [ABJURATION.] The crown has always exercised, in certain emergencies, the prerogative of restraining a subject from leaving the realm; but it is a known maxim of the common law, that no subject, however criminal, shall be sent out of it without his own consent or by authority of parliament. It is accordingly declared by the Great Charter, that "no

freeman shall be exiled, unless by the judgment of his peers or the law of the land."

There are, however, instances in our history of an irregular exercise of the power of banishing an obnoxious subject by the mere authority of the crown; and in the case of parliamentary impeachment for a misdemeanor, perpetual exile has been made part of the sentence of the House of Lords, with the assent of the king. (Sir Giles Mompesson's case, in the reign of James I., reported by Rushworth and Selden, and cited in Comyns, *Digest*, tit. "Parliament," 1. 44.) Aliens and Jews (formerly regarded as aliens) have, in many instances, been banished by royal proclamation.

Banishment is said to have been first introduced as a punishment in the ordinary courts by a statute in the thirtieth year of the reign of Elizabeth, by which it was enacted that "such rogues as were dangerous to the inferior people should be banished the realm;" but an instance occurs in an early statute of uncertain date (usually printed immediately after one of the eighteenth year of Edward II.), by which butchers who sell unsound meat are compelled to abjure the village or town in which the offence was committed. At a much later period the punishment now called transportation was sanctioned by the legislature, and has in other cases been made the condition upon which the crown has consented to pardon a capital offence.

Some towns of England used to inflict the punishment of banishment from the territory within their jurisdiction, for life and for definite periods. The extracts from the Annals of Sandwich, one of the Cinque Ports, which are printed in Boys' 'History of Sandwich,' contain many instances of this punishment in the fifteenth and sixteenth centuries.

Banishment in some form has been prevalent in the criminal law of most nations, ancient as well as modern. Among the Greeks two kinds were in use:—1. Perpetual exile (*φύγη*), attended with confiscation of property, but this banishment was probably never inflicted by a judicial sentence; at least among the later Athenians a sentence of perpetual

banishment appears only to have been pronounced when a criminal, who was accused of wilful murder, for instance, withdrew from the country before sentence was passed against him for the crime with which he was charged. The term *phuge* (*φύγη*) was peculiarly applied to the case of a man who fled his country on a charge of wilful murder, and the property of such a person was made public. Those who had committed involuntary homicide were also obliged to leave the territory of Attica, but the name *phuge* was not given to this withdrawal, and the property of the exile was not confiscated. Such a person might return to Attica when he had obtained the permission of some near kinsman of the deceased. (Demosthenes, *Against Aristocrates*, cc. 9, 16.) 2. Ostracism, as it was called at Athens, and in some other democratical states of Greece, or Petalism, the term in use at Syracuse, was a temporary expulsion, unaccompanied by loss of property, and inflicted upon persons whose influence, arising either from great wealth or eminent merit, made them the objects of popular suspicion or jealousy. Aristides was ostracized from Athens for ten years, not because he had done any illegal act, but because people were jealous of his influence and good fame.

The general name for Banishment among the Romans in the Imperial period was *Exsilium*; and it was a penalty inflicted under the Empire on conviction in a *Judicium Publicum*, if it was also a *Judicium Capitale*. A *Judicium Publicum* was a trial in which the accused came within the penalties of certain laws (*leges*), and it was *Capitale* when the penalties were either death or *exsilium*. This *Exsilium* was defined by the Jurists under the Empire to be "*aquæ et ignis interdictio*," a sentence which deprived a man of two of the chief necessities of life. (Paulus, *Dig.* 48, tit. 1. s. 2.) The sentence was called *Capital* because it affected the *Caput* or *Status* of the condemned, and he lost all civic rights. There was also *Exsilium* which was not accompanied by civil disabilities, and accordingly was not *Capitalis*: this was called *Relegatio*. The person who was relegated was either

ordered to reside in some particular spot, or he was excluded from residing in particular places; the period of relegation might be definite or indefinite. If the relegation was perpetual, the sentence might include the loss of part of his property; but the person who was relegated retained all the privileges of a Roman citizen. The poet Ovid was relegated to Tomi on the Danube: he was not *exsul*. Deportation, *Deportatio in insulam*, was a sentence by which a criminal was carried into some small island, sometimes in chains, and always for an indefinite period. A person who was relegated went to his place of exile. The person who was deported lost his citizenship and his property, but he continued to be a free man. It was a consequence of the loss of citizenship that the relation of the *patria potestas* was thereby dissolved, and accordingly a father who lost his citizenship by Deportation lost his power over his children; and the effect was the same if a son was under the penalty, for the son ceased to be a Roman citizen, and consequently ceased to be in his father's power. But marriage was not dissolved either by the *Interdictio* or *Deportatio*. (*Cod.* 5, tit. 16, s. 24; tit. 17, s. 1.) *Interdictio* and *Deportatio* are mentioned as two separate things in the Constitutions just referred to; but in the Institutes (i. tit. 12) *Deportatio* only is mentioned, and it corresponds to *Interdictio* in the passage in Gaius (i. 128). Some further remarks will presently be made on this part of the subject.

Under the early Republic *Exsilium* was not a punishment: it was, as the name imports, merely a change of soil. A Roman citizen could go to another state, and the citizen of such state could remove to Rome, by virtue of isopolitical rights existing between the two states. This right was called *Jus Exsulandi*, the Right of *Exsilium* as applied to the party who availed himself of it, and the Law of *Exsilium* when it is considered a part of the political system. The condition of the *exsul* in the state to which he had removed might be various; but it seems probable that he would acquire citizenship in his new state, though he might not enjoy it in all its fulness (*optimo jure*). By the act of removing to another state

as an *exsul*, he divested himself of his original citizenship. A man who was awaiting his trial might withdraw before trial to another state into *Exsilium*—a practice which probably grew out of the *Jus Exsulandi*. Thus *Exsilium*, though a voluntary act, came to be considered as a punishment, for it was a mode of avoiding punishment; but still Banishment, as such, was not a part of the old Roman law. A practice was established under the later republic of effecting a sentence of banishment indirectly by means of the "*interdictio aquæ et ignis*," or with the addition of the word "*tecti*." (Cicero, *Pro Domo*, c. 30.) This sentence was either pronounced in a trial, or it was inflicted by a special *lex*. In the *lex* by which this penalty was inflicted on Cicero there was a clause which applied to any person who should give him shelter. This putting of a man under a ban, by excluding him from the main necessities of life, had for its object to make him go beyond the limits within which he was subjected to the penalty; for the *interdictio* was limited to a certain distance from Rome. In Cicero's case the *interdictio* applied to all places within four hundred miles of Rome (*Ad Attic.* iii. 4). The *interdictio* did not prevent him from staying at Rome, but it was assumed that no man would stay in a place where he was excluded from the first necessities of life. It has been a matter of dispute what was the legal effect of the *Interdictio* in the time of Cicero: in the period of the Antonines, as appears from Gaius, the sentence of *Interdictio* when pronounced for any crime, pursuant to a penal law (ob aliquid maleficium ex lege penali) was followed by loss of citizenship. The penal laws were various, such as the *Julia Majestatis*, *Julia de Adulteriis*, and others. In the Oration *Pro Domo*, the writer labours to prove that Cicero had not lost the *civitas* by the *Interdictio*, but the tenor of the argument rather implies that the loss of *civitas* was a legal effect of the *interdictio*, and that there were particular reasons why it was not so in the case of Cicero. The whole subject however is handled in such a one-sided manner that no safe conclusion can be derived from this oration. It appears from Cicero's own

letters that he considered it necessary for his safety to withdraw from Rome before the bill (rogatio) was passed by which he was put under the Interdict. He was restored by a lex passed at the Comitia Centuriata. (*Ad Attic.* iv. 1.) It appears from another letter (*Ad Attic.* iii. 23), that he had lost his civitas by the lex which inflicted the penalty of the Interdictio, but the loss of civitas may have been effected by a special clause in the Lex.

The rules as to Exile under the legislation of Justinian are contained in the *Digest*, 48, tit. 22. The use of the word *Deporto* as applied to criminals who suffered the punishment of *Deportatio*, occurs in Tacitus (*Annal.* iv. 13; xiv. 45). It may be inferred however, from an expression in Terence (*Phormio*, v. 8, 85), that the punishment of *Deportatio* existed under the Republic. When Ulpian observes (*Dig.* 48, tit. 13, s. 3) that "the penalty of *Peculation* (*peculatus*) comprised the *Interdictio*, in place of which *Deportatio* has now succeeded," he probably means not that the *Deportatio* was exactly equivalent to the *Interdictio*, and that the name merely was changed, but that the *Interdictio* was disused in the case of *Peculatus* and a somewhat severer punishment took its place. Under the earlier Emperors, the punishment of *Deportatio* and *Interdictio* both subsisted, as we see by the instances already referred to, and in the case of C. Silanus, Proconsul of Asia, who was convicted of *Repetundæ* and relegated to *Cythera*. (Tacitus, *Annal.* iii. 68, &c.) Some of the later Jurists seem in fact to use *Exsilium* as a general term for banishment, of which the two species are *Relegatio* and *Deportatio*. *Relegatio* again is divided into two species,—the *Relegatio* to a particular island, and the *Relegatio* which excluded a person from places which were specially named, but assigned no particular island as the abode of the *Relegatus*. The term *Interdictio* went out of use as the name of a special punishment, and *Deportatio* took its place, perhaps with some of the additional penalties attached to the notion of *Deporto*. In fact the verb *Interdicere* is used by the later jurists to express both the forms of

*Relegatio*, that under which a man was excluded from particular places (*omnium locorum interdictio*), and that by which he was excluded from all places except one (*omnium locorum præter certum locum*), which was in effect to confine him to the place that was named. (Marcianus, *Dig.* 48, tit. 22, s. 5, as corrected by Noodt, *Opera Omnia*, i. 58.) Sometimes the word *Exsilium* is used in the *Digest* (48, tit. 19, s. 38) to express the severer punishment of banishment, as opposed to the lighter punishment *Relegatio*. Practically then there were two kinds of banishment under the later empire, expressed by the names *Relegatio* and *Deportatio*, each of which had a distinct meaning, while the term *Exsilium* was used rather loosely.

The condemnation of criminals to work in the mines was a punishment in the nature of banishment, but still more severe. Thus, if a man seduced a maid who was of years too tender for cohabitation, he was sent to the mines, if he was a man of low condition; but only relegated, if he was of better condition. The same difference in punishment between people of low condition (*humiliores*) and those of better condition (*honestiores*) was observed in other cases; and it may be remarked that the like distinction in inflicting punishments is not unknown in this country in summary convictions.

Deportation is the third of the six "peines afflictives et infamantes" of the French Code Pénal. The punishment of deportation consists in the offender being transported out of the continental territory of France, there to remain for life; and if he returns, hard labour for life is added to his sentence. The sentence of deportation carries with it loss of all civil rights; though the government is empowered to mitigate this part of the penalty either wholly or in part. (Law of September, 1835, § 18, *Code Pénal*.) Banishment (*bannissement*) is classed as one of the two "peines infamantes," the other being civil degradation. The offender is transported by order of the government out of the territory of the kingdom for at least five and not more than ten years.

BANK, in barbarous Latin *bancus*,

literally signifies a bench or high seat; but as a legal term it denotes a seat of judgment, or tribunal for the administration of justice. In a rude state of society, justice is usually administered in the open air, and the judges are placed in an elevated situation both for convenience and dignity. Thus it appears that the ancient Britons were accustomed to construct mounds or benches of turf for the accommodation of their superior judges. (Spelman, *ad verbum*.) It is clear, however, that in very early times in this country there was a distinction between those superior judicial officers who, for the sake of eminence, sat upon a bench or tribunal, and the judges of inferior courts, such as hundred courts and courts baron, the latter being analogous to the *judices pedanei* of the Roman law—a kind of inferior judges, whose duties are not very clearly defined, but who are supposed to have derived their denomination *a pedibus*, because they decided on inferior matters, on the level ground, and not on a raised seat.

In consequence of this distinction, the king's judges, or those who were immediately appointed by the crown to administer justice in the superior courts of common law, were in process of time called justices of the bench, or, as they are always styled in records, *justiciarii de banco*. This term, in former times, denoted the judges of a peculiar court held at Westminster, which is mentioned in records of the reign of Richard I., and must therefore have made its appearance, under the name of *bancus* or bench, not long after the Conquest. This court no doubt derived its name from its stationary character, being permanently held at Westminster, whereas the *curia* or *aula regis* followed the person of the king. (Maddox, *History of the Exchequer*, p. 539.) This institution was the origin of the modern Court of Common Pleas, and the judges of that court retain the technical title of "Justices of the Bench at Westminster" to the present day; whereas the formal title of the King's Bench judges is "the justices assigned to hold pleas in the court of the king before the king himself." For many centuries, however, the latter court has been popularly

called the Court of King's Bench, and the judges of both these courts have been described in acts of parliament and records in general terms as "the judges of either bench" (*judices utriusque banci*); but the barons of the Court of Exchequer have never been denominated judges of the bench, though, in popular language, a new baron, on his creation, is, like the other judges, said to be raised to the bench.

The phrase of sitting *in banco*, or in bank, merely denotes the sessions during the law terms, when the judges of each court sit together upon their several benches. In this sense it is used by Glanville, who wrote in the reign of Henry II., and who enumerates certain acts to be done by justices *in banco sedentibus*. Days *in bank* are days particularly appointed by the courts, or imposed upon them by various statutes, when process must be returned, or when parties served with writs are to make their appearance in full court. The day *in bank* is so called in opposition to the day at Nisi Prius, when a trial by a jury takes place according to the provisions of the statute of Nisi Prius. [ASSIZE.]

**BANK—BANKER—BANKING.** By the term "bank" is understood the establishment for carrying on the business to be described; the "banker" is the person by whom the business is conducted; and the expression "banking" is commonly used to denote the system upon which that business is managed, and the principles upon which it should be governed or regulated.

We propose to consider the subject of banks and banking under the following heads:—

- I. A brief historical sketch of the origin and progress of banking.
- II. An explanation of the objects and general principles of banking, including a description of the various kinds of banks.
- III. The history and constitution of the Bank of England.
- IV. The art of banking as carried on by private establishments and joint stock associations in London and other parts of England, and in Ireland.

V. A description of the Scotch system of banking.

VI. Some notices of the banking system followed in the United States of America.

I. *Historical sketch of the origin and progress of Banking.*—Until, in the progress of a community towards civilization, the extent of its commercial dealings had become very considerable, none would be led to give their attention to the occupation of facilitating the money operations of the rest of the mercantile community. At first this office would doubtless be undertaken for others by the more considerable traders, and a further period would elapse before it would become a separate business.

It is probable that the necessity for some such arrangement would be first experienced in consequence of the different weights and degrees of fineness of the coined moneys and bullion which would pass in the course of business between merchants of different nations. The principal occupation of the money-changers mentioned by St. Matthew was doubtless that of purchasing the coins of one country, and paying for them in those of their own or of any other people, according to the wants and convenience of their customers. It is likewise probable that they exercised other functions proper to the character of bankers, by taking in and lending out money, for which they either allowed or charged interest. (Matthew xxv. 27.)

The bankers of Athens appear to have fulfilled most of the functions belonging to the trade. (Demosthenes, *Against Aphobus*, Orat. 1.) They received money in deposit at one rate of interest, and lent it out at another; they advanced money upon the security of goods, and lent sums in one place to be repaid in another. They likewise dealt in foreign coins, and appear to have occasionally advanced money to the state for public purposes. Some of them, as we are told, acquired great wealth. In the treatise written by Xenophon on the revenues of Attica, we find a remarkable project for the formation of a bank, the subscription to which should be open to all the Athenians. The object of this project was to raise a great

revenue, by taking advantage of the high rate of interest then currently paid by commercial adventurers, and which sometimes reached the exorbitant rate of twenty-five per cent. The grandeur of this scheme of Xenophon, which was intended to combine the whole free population of Athens into one great banking company, could hardly have been in agreement with the condition of a society in which the element of mutual confidence was but scantily infused. To afford a better chance of success to his proposal, Xenophon endeavoured to engage the public spirit of his countrymen in its favour, by suggesting that a part of the great gains which it could not fail to produce might be employed "to improve the port of Athens, to form wharfs and docks, to erect halls, exchanges, warehouses, market-places, and inns, for all which tolls and rents should be paid, and to build ships to be let to merchants." (Mitford, *History of Greece*, vol. iv. p. 22.)

The successive conquests of the Romans having caused a great mass of wealth to be accumulated in the city of Rome, a necessity arose for the establishment of bankers. These traders were called *argentarii*, and their establishments received the name of *tabernæ argentariæ*. *Mensarii* and *Numularii* are said to have been public functionaries, who had something to do with money; but their functions do not seem to be very clearly ascertained. Bankers (*argentarii*) conducted money business in Rome in a manner very similar to that now in use in Europe. They were the depositaries of the revenues of the wealthy, who through them made their payments by written orders. They also took in money on interest from some, and lent it at higher rates to others; but this banking trade does not appear to have been held in much repute in Rome, where a great prejudice existed against the practice of making a profit from the loan of money. They also sometimes conducted public sales (*auktiones*), where they had to receive the purchase-money and do whatever was necessary towards completing the bargain. (Gellius, iv. 126.)

During the middle ages, in which com-



merce and the arts can hardly be said to have existed, there could be no field open for the banking business; but on the revival of commerce in the twelfth century, and when the cities of Italy engrossed nearly all the trade of Europe, the necessity again arose for the employment of bankers. At first they carried on their business in the public market-places or exchanges, where their dealings were conducted on benches, whence the origin of the word bank, from *banco*, the Italian word for a bench. The successful manufacturing efforts of the Florentines brought them into commercial dealings with different countries in Europe, and thence arose the establishment of banks. In a short time Florence became the centre of the money transactions of every commercial country in Europe, and her merchants and bankers accumulated great wealth.

The earliest public bank established in modern Europe was that of Venice, which was founded in 1157. This bank was in fact an incorporation of public creditors, to whom privileges were given by the state as some compensation for the withholding of their funds. The public debt was made transferable in the books of the bank, in the same manner as the national debt of England is transferable at the present time; it was made obligatory upon the merchants to make their contracts and draw their bills in bank-money, and not in the current money of the city. This establishment was always essentially a bank of deposit and not of issue, and existed until the subversion of the republic in 1797. Its money at all times bore a premium, or *agio*, over the current money of the city. [AGIO.]

About the year 1350, the cloth-merchants of Barcelona, then a wealthy body, added the business of banking to their other commercial pursuits; being authorised so to do by an ordinance of the king of Aragon, which contained the important stipulation, that they should be restricted from acting as bankers until they should have given sufficient security for the liquidation of their engagements. Fifty years afterwards, a bank was opened by the functionaries of the city, who declared their public funds answerable for

the safety of money lodged in their bank, which was a bank of deposit and circulation.

The Bank of Genoa was planned and partially organised in 1345; but was not fully established and brought into action until 1407, when the numerous loans which the republic had contracted with its citizens were consolidated, and formed the nominal capital stock of the bank. This bank received the name of the Chamber of Saint George, and its management was intrusted to eight directors chosen by the proprietors of the stock. As a security for its capital in the hands of the republic, the bank received in pledge the island of Corsica, and several other possessions and dependencies of Genoa.

The Bank of Amsterdam was established in 1609, simply as a bank of deposit, to remedy the inconvenience arising from the great quantity of clipped and worn foreign coin which the extensive trade of the city brought there from all parts of Europe. This bank, which was established under the guarantee of the city, received foreign coin, and the worn coin of the country, at its real intrinsic value, deducting only a small per centage which was necessary for defraying the expense of coinage and the charges of management. The credits given in the bank-books for coin thus received, was called bank-money, to distinguish it from the current money of the place. The regulations of the country directed that all bills drawn upon or negotiated at Amsterdam, of the value of 600 guilders (about 55*l.*) and upwards, must be paid in bank-money. Every merchant was consequently obliged to keep an account with the bank, in order to make his ordinary payments. The Bank of Amsterdam professed to lend out no part of its deposits, and to possess coin or bullion to the full value of the credits given in its books. Dr. Adam Smith has given an account of this bank (*Wealth of Nations*, book iv. c. 3). When the French invaded Holland, it was discovered that the directors had privately lent nearly a million sterling to the states of Holland and Friesland, instead of keeping bullion in their cellars in accordance with the regulations of the

Bank. In 1814 a new bank was established, called the Bank of the Netherlands, on the plan of the Bank of England.

The Bank of Hamburg was established in 1619, and is a well-managed institution, conducted upon nearly the same plan as the Bank of England. The Bank of England, which we have separately noticed, was opened in 1694. The Bank of Vienna, established in 1703 as a bank of deposit and circulation, subsequently (1793) became a bank of issue; and its notes were the sole circulating medium in Austria; but having fallen to a considerable discount in consequence of their excessive quantity, the Austrian National Bank was established in 1816, with the object of diminishing the paper currency, and of performing the ordinary banking functions. The banks of Berlin and Breslau were erected in 1765, under the sanction of the state. These are banks of deposit and issue, and are likewise discounting-offices for bills of exchange.

During the reign of the Empress Catherine, three different banks were established at St. Petersburg; these were, the Loan Bank, the Assignment Bank, and the Loan Bank for the nobility and towns. The Loan Bank, or Lombard, or Russian Mont de Piété, was established in 1772, and makes advances upon deposits of bullion and jewels, and allows interest upon all sums deposited for at least a year. The operations of this bank as a Mont de Piété are still carried on for the profit of the Foundling Hospital in St. Petersburg. The Assignment Bank, opened in St. Petersburg in 1768, and Moscow in 1770, issues the government paper-money, and is in all respects an imperial establishment: it is now called the Imperial National Note Bank, having been changed into a Reichs (imperial) assignment bank at St. Petersburg in 1786. The Loan Bank, established in 1786, for the nobility and towns, advances money on real security. It is likewise a discount-bank, and acts as an insurance company. The Aid Bank, established in 1797, advances money to relieve estates from mortgages, and to provide for their improvement. The punctual payment of interest upon its advances is enforced by taking their

estates from the possession of defaulters until the entire debt is discharged. The Imperial National Commercial Bank of Russia, which was established in 1818 receives deposits of coin and bullion, and has a department for transferring credit from one account to another, in the manner of the banks of Amsterdam and Hamburg. It is also a bank of discount, and makes advances upon merchandise of home production. Its capital, about a million and a half sterling, is declared to be sacred on the part of the Russian government, and free from all taxation, sequestration, or attachment, as well as from calls for assistance on the part of the state. This bank has branches at Moscow, Archangel, and other important commercial towns in the empire.

The Bank of France, established in 1803, has a capital of 3,596,000*l.* sterling. This association alone enjoys the privilege of issuing notes in France, which are for 1000 to 500 francs each. The bank is a bank of deposit and circulation, and has several branches. It is obliged to open an account with any person who may require it; and is not allowed to charge any commission for the transaction of ordinary banking business. Its profits result from the use of money deposited by its customers, from the issue of its own notes, and from discounts upon mercantile bills; besides which, a charge is made every six months of one-eighth per cent. for the safe custody of plate, jewels, and other valuables upon which it has made advances. The affairs of this bank are managed by a governor and deputy-governor, who are nominated by the king, and by seventeen regents and three censors elected from among the shareholders. A full statement (*compte rendu*) is published every quarter (pursuant to the law of 30th of June, 1840), which furnishes a complete exposition of the affairs of the bank, which is one of the most flourishing and best managed banks in Europe. The official return of the operations and state of the bank for the quarter ending 25th September, 1844, contained the following items:—Sundry Cash Receipts 44,309,380*l.*; Cash paid 44,173,028*l.*; Commercial Bills discounted 11,140,896*l.*; Notes outstanding

9,636,724*l.*; Cash in hand 10,449,876*l.*; Public Securities 2,009,200*l.* This return shows that the capital of the bank in circulation exceeded the amount of notes in circulation.

Banks have been established at Calcutta, Bombay, and Madras; and in the interior of India the natives are extensively engaged in banking, but chiefly in issuing and discounting bills of exchange. Within the last few years several banks have been established in London which confine their business chiefly to particular colonies, where they have branches.

*II. Objects and General Principles of Banking.*—Banking establishments may be divided into three classes, banks of deposit, banks of issue, and banks which exercise both these functions.

Banks of deposit, strictly speaking, are those which, like the old bank of Amsterdam, simply receive the money or valuables of others into custody, and keep them hoarded in their coffers till called for by the depositors. However convenient such an establishment may be to the persons by whom it is used, it must be evident that it can contribute nothing to the general wealth of a community, and that the only means of profit which it provides for those who conduct it, must arise from payments made by its customers in the shape of commissions, or fines which partake of the nature of commissions. If, instead of burying the clipt and worn coins of which its hoards were composed, the Bank of Amsterdam had converted them into money of the proper standard, and had lent the same at interest upon proper securities, no commissions need have been required from its customers, who would in so far have been benefited: and a considerable capital being set free for the prosecution of commercial enterprises, the country might have thence derived continued additions to its wealth.

Banks of deposit, in this confined sense of the word, are now very little used, and the term is generally understood to mean an establishment which *lends* as well as *receives* the property of others, and derives its profits from charging a higher rate of interest than it allows. Some banks of this description, such as the private banks

in London, do not allow any interest upon sums placed in their custody.

In like manner there are few, if any, establishments which are purely banks of issue. A banker sends forth his promissory notes that he may employ to his own profit, during the time that the notes remain in circulation, the money or property for which he may have exchanged them, and by this course he gives to his establishment the mixed character of a bank of issue and of circulation. The most usual means by which a banker gets his notes into circulation is by lending them on personal or other security to customers engaged in business, who have a running account at the bank. In general, those bankers who issue their own notes likewise receive deposits: this at least is the practice in England.

Bankers and banking associations usually possess considerable wealth, and are thought deserving of confidence on the part of the public; and there can be no doubt that, so long as they conduct their business with integrity and prudence, they are of material service in giving life and activity to commercial dealings. They are, in fact, the means of keeping that portion of the floating capital of a country fully and constantly employed, which but for their agency would frequently lie dormant and unproductive for uncertain periods in the hands of individuals. Thus, while banking does not directly create capital, the issue of bank notes enables people to buy who could not buy for want of a medium of exchange. Again, a large farmer has grain and stock, and he wants to drain; but money is short. He goes to a bank and gets bank-notes on the security of his property. That is a useful operation. Another thing is, people may deposit small sums of money at a bank, which the banker lends. Thus a bank is a mean of facilitating the loan of money from the possessor of money to the farmer or manufacturer who has goods, but wants ready money. The lending of money is the operation of banking, and a bank is a centre which facilitates this lending: it enables people to lend through a banker and his connexion, who could not lend without that. But the real legal loan is the banker's. The man who puts

his money in the bank looks to the banker only. And every man who holds a banker's note is his creditor to that amount. How to secure the safety of this operation, so that he who has a note shall always get what he gave for it, is the question that concerns the public.

Public banks, when established under proper regulations, are calculated to benefit the community in the greatest degree, and if at any time their course of management has been such as to counteract the advantages they bring, and to derange the money dealings of the country in which they are established, the evil has arisen from the want of an adequate acquaintance with the principles upon which their proceedings should be founded. In this respect, public banks may indeed be rendered in the highest degree public nuisances, but such an effect is far from being the necessary attendant of the banking system; on the contrary, it may be confidently affirmed, that no institutions are so well calculated to preserve order and steadiness throughout commercial transactions. In this country, and in our own day, we have seen and felt the disastrous effects of a want of knowledge in this branch of political science on the part of those who have directed our national bank, one of the most powerful engines of modern times, and it has only been through the discussions and investigations that have arisen out of those disasters that we have at length brought out, so as to be felt and acknowledged and acted upon, sound and safe principles for regulating the trade of a banker.

The true principle upon which bank issues should be governed is now understood to be—that the circulation should at all times be kept full, but without any redundancy; and the simple means whereby this state of things may be determined and regulated are (except on very extraordinary emergencies) offered by the state of the foreign exchanges.

We cannot better close this part of the subject than by the following quotation from Dr. Smith (*Wealth of Nations*, vol. ii. p. 69), in his chapter on Money:—"It is not by augmenting the capital of the country, but by rendering a greater part of that capital active and productive

than would otherwise be so, that the most judicious operations of banking can increase the industry of the country. That part of his capital which a dealer is obliged to keep by him unemployed and in ready money, for answering occasional demands, is so much dead stock—which, so long as it remains in this situation, produces nothing, either to him or to his country. The judicious operations of banking enable him to convert this dead stock into active and productive stock—into materials to work upon, into tools to work with, and into provisions and subsistence to work for: into stock which produces something both to himself and to his country. The gold and silver money which circulates in any country, and by means of which the produce of its land and labour is annually circulated and distributed to the proper customers, is, in the same manner as the ready money of the dealer, all dead stock. It is a very valuable part of the capital of the country which produces nothing to the country. The judicious operations of banking, by substituting paper in the room of a great portion of this gold and silver, enable the country to convert a great part of this dead stock into active and productive stock—into stock which produces something to the country. The gold and silver money which circulates in any country may very properly be compared to a highway, which, while it circulates and carries to market all the grass and corn of the country, itself produces not a single pile of either. The judicious operations of banking, by providing (if I may be allowed so violent a metaphor) a sort of waggon-way through the air, enable the country to convert as it were a great part of its highways into pastures and corn-fields, and thereby to increase very considerably the annual produce of its land and labour."

III. *History and Constitution of the Bank of England.*—This establishment, unquestionably the largest of its kind in Europe, was projected by a Scotch gentleman, Mr. William Patterson, in 1694. The scheme having received the sanction and support of the Government, to whom the whole of the capital was to be lent, the subscription was filled in ten days

from its being first opened; and on the 27th of July, 1694, the Bank received its charter of incorporation. This charter provides, "that the management and government of the corporation be committed to a governor, deputy-governor, and twenty-four directors, who shall be elected between the 25th of March and the 25th of April every year, from among the members of the company;—that those officers must be natural-born subjects of England, or have been naturalized;—that they shall possess, in their own names and for their own use, severally, the governor (at least) 4000*l.*, the deputy-governor 3000*l.*, and each director 2000*l.* of the capital stock of the said corporation;—that thirteen or more of the said governors and directors (of whom the governor or deputy-governor shall be always one) shall constitute a Court of Directors, for the management of the affairs of the company;—that no dividend shall at any time be made by the said governor and company, save only out of the interest, profit, or produce arising out of the said capital stock or fund, or by such dealing as is allowed by Act of Parliament." Each elector must be possessed of at least 500*l.* capital stock of the company. Four general courts to be held in every year, in the months of April, July, September, and December; and special general courts to be summoned at all times upon the requisition of nine qualified proprietors. The majority of electors present at general courts to have the power of making bye-laws for the government of the corporation; but such bye-laws must not be repugnant to the laws of the kingdom.

The original capital of the Bank, which amounted to 1,200,000*l.*, was, as already mentioned, lent to Government, who paid interest for the same at the rate of 8 per cent., with a further allowance of 4000*l.* a year for management.

The first charter was granted to continue for eleven years certain, or till a year's notice after the 1st of August, 1705.

In 1697 a new subscription was raised and lent to Government, to the amount of 1,001,171*l.* 10*s.*, which sum was repaid in 1707, and the capital again reduced to

its original amount. In the following year the charter was renewed until 1732; and in 1713 a still further extension was granted for ten years, or until 1742. On the first of these occasions the capital was raised by new subscriptions to 5,559,995*l.* In 1722 further subscriptions were received, amounting to 3,400,000*l.*; and in 1742, when the charter was again renewed until 1764, a call made upon the stockholders raised the entire capital to 9,800,000*l.* A further call of 10 per cent. upon this amount was made in 1746. The charter was again renewed until 1786; but previous to the expiration of this term, was continued until 1812, a call of 8 per cent. having been made in 1782. In 1800 the charter was further extended until twelve months' notice after the 1st of August, 1833; and in 1816 the directors were empowered to appropriate a part of their undivided profits among the proprietors, by adding 25 per cent. to the amount of their stock. These successive additions raised the capital of the Bank to 14,553,000*l.*, the whole of which amount was, as it was raised, lent to Government. At the renewal of the company's charter, which was granted in 1833 (Act 3 & 4 Wm. IV. c. 98), a provision was made for the repayment, on the part of the public, of one-fourth part of the debt due to the Bank. At each of the times before mentioned for the renewal of the charter, some advantage was given by the Bank to the public, in the shape of an advance of money at a low rate of interest, or without any interest. At present, the rate paid by Government for the Bank capital is 3 per cent. per annum.

From its first institution, the Bank of England has discounted mercantile bills. The rate of discount charged fluctuated at first, but was usually between 4½ and 6 per cent. In 1695 a distinction was made in this respect, in favour of persons who used the Bank for purposes of deposit: for such persons inland bills were discounted at 4½, and foreign bills at 3 per cent.; while to all other persons the rate was 6 per cent. upon both descriptions of bills. After that time the rates were equalized to all classes, and fluctuated between 4 and 5 per cent. until 1773, when 5 per cent. was fixed as the rate of

discount upon all descriptions of bills; and at this per-centage the Bank continued to discount bills until June, 1822, when it was lowered to 4 per cent. The rate was again advanced to 5 per cent. during the panic, in December, 1825; but was lowered in July, 1827, to 4 per cent.

Shortly after its first establishment, the Bank was involved in some difficulties, and was obliged, in 1696, even to suspend the payment of its notes, which were then at a considerable discount. Having received assistance from Government, this difficulty was soon surmounted; and the establishment was not again placed in the same dilemma until 1797, when the celebrated Bank Restriction Act was passed, which will require a more particular notice.

In 1708 an Act was passed, greatly in favour of the Bank of England, declaring that "during the continuance of that corporation it should not be lawful for any other body politic, erected or to be erected, other than the said Governor and Company of the Bank of England, or for any other persons whatever united, or to be united, in covenants of partnership exceeding the number of six persons, in that part of Great Britain called England, to borrow, owe, or take up any sum or sums of money on their bills or notes payable on demand, or in any less time than six months from the borrowing thereof." This Act continued in force until 1826, when it was partially repealed, so as to admit of the formation of banking establishments for the issue of notes with more than six partners, at any distance exceeding sixty-five miles from London; but these establishments were restrained from having any branches in London; and it was expressly declared that the partners, jointly and severally, should be held liable for all the debts of the bank with which they might be connected.

Until a very recent period, it was not doubted that the Act of 1708, as above described, forbade the formation of banks of all descriptions having more than six partners, and this impression was universally acted upon. Even the discussions which preceded the partial relax-

ation of its provisions, in 1826, failed to produce any different views regarding it. During the negotiations of 1833 for the renewal of the Bank Charter, strong doubts were conceived upon the point as to whether the restriction was not confined to the forbidding only of banks of issue; and the law-officers of the crown having been called upon for their opinion on the subject, gave it as their decided opinion, that banks, provided they did not issue their own notes payable to bearer, might have been at any time established in any part of the kingdom. To remove all doubts upon the subject, a clause was introduced in the Act of 1833, expressly authorizing the establishment of banks which do not issue notes, with any number of partners, in any place within or without the limits to which the exclusive privilege of the Bank of England, in regard to issuing notes, now applies.

The Bank is expressly prohibited from engaging in any commercial undertaking, other than transactions purely and legitimately connected with banking operations, such as the buying and selling of coin or bullion, and bills of exchange. But a power being given to the corporation to advance money upon the security of goods and merchandise, it was of course necessary to empower the directors to sell the same for their reimbursement.

In the year 1759 the Bank began to issue notes for 10*l.*, having previously not put any into circulation below 20*l.* Notes of 5*l.* value were first issued in 1793; and in March, 1797, 1*l.* and 2*l.* notes were brought into use. The issue of the latter, except in one partial instance, ceased in fact in 1821, and by law on the 5*th* of April, 1829, since which time 5*l.* is the smallest sum for which any bank in England may send forth its notes payable to bearer.

The necessity for the issue of notes for so small an amount as 1*l.* arose out of the act of 1797, which restricted the Bank from making payments in gold, a measure which was forced upon it by the financial operations of the Government, then very largely indebted to the corporation. Under these circumstances became a matter of necessity as well as

of justice towards the Bank to interpose, and to shield it from a catastrophe towards which it had been hurried through yielding to the solicitations for assistance made by the Government. On Saturday, the 25th of February, only 1,270,000*l.* in coin and bullion remained in the coffers of the Bank. On the following day an order in council was issued, prohibiting the directors from paying their notes in specie until the sense of parliament could be taken on the subject. The promulgation to the public of this order being accompanied by assurances of the affluent circumstances of the corporation, as well as by a declaration on the part of the leading bankers and merchants of London, pledging themselves to receive bank-notes in payment of any sums due to them, failed to make any injurious impression. A committee of the House of Commons was immediately afterwards appointed to inquire into the affairs of the Bank, which committee reported that a surplus of effects to the amount of 3,825,890*l.* was possessed by the corporation over and above its capital of 11,684,800*l.* then in the hands of Government.

The circumstances by which the suspension of cash payments was rendered necessary were altogether of a political nature. In the contest then carried on, which, with only a few months' interval in 1801 and 1802, continued until 1815, and which involved the country in expenses of unparalleled magnitude, it was considered indispensable for the government to be provided with a powerful engine for carrying on its financial operations, and it was thought also to have been necessary, under those circumstances, to remove from the engine thus employed the ordinary responsibilities which should attach to a banking establishment. The Minister, on the second renewal of the Restriction Act, prevailed upon parliament to continue its duration until one month after the conclusion of war by a definitive treaty of peace. The period thus contemplated having arrived at the close of 1801, it was found necessary, in consequence of the unsettled state of affairs, to prolong the act for a further period; and the war having

soon after recommenced, the restriction was again continued until six months after the ratification of a definitive treaty of peace.

The financial operations of the Government having been continued upon a most enormous scale up to the very moment of the treaty of peace in 1814, the Bank, which had seconded those efforts, and had made no preparation for so total a change of system, procured the renewal of the Suspension Act until the 5th of July, 1816. If this question had at that time been settled with a view to the public good, we may venture to assert that the Restriction Act would not have been renewed. Commerce was again allowed to flow into its natural channels,—we found anxious customers, at high prices, for goods which had before been ruinously depressed, and it became as impossible to keep the gold out, as it had, under the contrary circumstances, been to retain it within the kingdom.

Had the Bank of England at this time contracted its issues in only a very trifling degree, its notes would have been restored to their full value, measured by the price of gold, a fact which can hardly be doubted if we consider how large a proportion of their depreciation was recovered under a directly opposite course of proceeding. At the end of 1813, the amount of Bank of England notes in circulation was 23,844,050*l.*, the price of gold was 5*l.* 10*s.* per ounce, and the depreciation of Bank-paper consequently amounted to 29*l.* 4*s.* 1*d.* per cent. At the end of 1814, the Bank issues were increased to 28,232,730*l.*, and the price of gold had fallen to 4*l.* 6*s.* 6*d.* per ounce, so that the notes were depreciated only to the extent of 9*l.* 19*s.* 5*d.* per cent. The rise in value which Bank of Eng<sup>d</sup> and notes actually experienced, amounting to 19*l.* 4*s.* 8*d.* per cent., or nearly two-thirds of their depreciation, was occasioned, in the face of an increased issue of more than 18 per cent., by the great quantity of gold poured into the country at the reopening of our commerce, and no doubt also in some degree by the diminished circulation of the notes of country bankers.

This state of things could not last long. Gold can never continue to circulate in

the presence of an inconvertible paper currency, and an opportunity, the best that could possibly have offered for extricating ourselves from a false position, and for restoring our currency to a sound and healthy state, was suffered to pass unimproved. The reason for this neglect is sufficiently obvious. The Bank directors, however blameless for the state of things which first caused the restriction, soon found that measure productive of enormous profits to their establishment, and were anxious to prolong its operation by every means within their power; and the ministers, who had still large financial operations to make, found it most to their convenience to effect them in a redundant paper currency.

Except at the very moment of its enactment, the Bank Restriction Act was for some time so little needed for the security of that corporation, that its notes, during the first three years of the system, were fully on a par with gold, and sometimes even bore a small premium. In less than seven months after the Suspension Act was first put in force, the directors of the bank passed a resolution, in which they declared that the corporation was in a situation to resume with safety making payments in specie, if the political circumstances of the country did not render such a course inexpedient. After a time, the suspension was found to be so convenient and profitable to the Bank, that the wish to recur to cash payments was no doubt abandoned by the directors. In 1801 and the following year, Bank notes, owing to their excessive quantity in circulation, fell to a discount of 7 to 8 per cent., but partially recovered in 1803, and remained until 1810 within 2 or 3 per cent. of par. In the year last mentioned the depreciation occurred which led to the appointment of the celebrated Bullion Committee. The issues of the Bank, which on the 31st of August, 1808, were 17,111,290*l.*, had increased to 19,574,180*l.* in the following year, and on the 31st of August, 1810, amounted to 24,793,990*l.*, being an increase of about 45 per cent. in two years—a cause quite sufficient to account for their depreciation. In 1811 the circulation was diminished to 23,286,850*l.*, and the discount was re-

duced to 7½ per cent. A further issue again depressed the value of Bank notes, as compared with gold: on the 31st of August, 1814, the amount in circulation was 28,368,290*l.*, and the depreciation amounted to 25 per cent. It is seldom that cause and effect can be thus clearly shown in relation to each other. In consequence of the material fall in the value of agricultural produce, which took place in 1813 and 1814, such serious losses were sustained by the country bankers in various parts of the country, that in 1814 and the two following years 240 of them failed; and the general want of confidence thus occasioned, so far widened the field for the circulation of Bank of England notes, that although the amount of them in circulation increased, in 1817, to 29,543,780*l.*, their value relatively to that of gold was nearly restored.

In 1817, having accumulated nearly twelve millions of coin and bullion, the Bank gave notice, in the month of April, that all notes of 1*l.* and 2*l.* value, dated prior to 1816, might be received in gold. In the September following, a further notice was given that gold would be paid for notes of every description dated prior to 1817. The effect of these measures was to drain the Bank of a large portion of its bullion, so that in August, 1819, no more than 3,595,960*l.* remained in its coffers, and an act was hurried through parliament to restrain the Bank from acting any further in conformity with the notices here mentioned.

In the same year the bill was passed, commonly known as Mr. Peel's Bill, which provided for the gradual resumption of cash payments. Under the provisions of this law, the Bank Restriction Act was continued in force until the 1st of February, 1820; from that time to the 1st of October in the same year, the Bank was required to pay its notes in bullion of standard fineness at the rate of 4*l.* 1*s.* per ounce; from the 1st of October, 1820, to the 1st of May, 1821, the rate of bullion was reduced to 3*l.* 19*s.* 6*d.* From the last-mentioned day, bullion might be demanded in payment for notes at the Mint price of 3*l.* 17*s.* 10½*d.* per ounce; and on the 1st of May, 1823, the current gold coin of the realm might be demanded.



The provisions of this act, as here mentioned, were respectively anticipated in point of time, and on the 1st of May, 1821, the Bank recommenced the payment of their notes in specie.

One of the provisions of this act arose out of a suggestion made by the late Mr. Ricardo, which appears calculated to afford every requisite security against the evils to which any system of paper currency is exposed. The effect of Mr. Ricardo's plan would have been to exclude a metallic currency, with the exception of what might be necessary for effecting small payments, by making Bank of England notes a legal tender, with the obligation imposed on the directors to pay them, on demand, in gold bars of the proper standard, and of a weight not less than sixty ounces for any one payment. This provision, which was temporarily adopted in Mr. Peel's bill, would effectually prevent any depreciation of the notes, and might have a peculiarly good effect in all times of *political* panic, when the greatest part of the mischief arises from the numerous holders of small amounts of notes, and who, on the plan proposed, would be unable, individually, and without some extensive combination for the purpose, to drain the Bank of its treasure. No good reason has ever been yet given to the public against the permanent adoption of this economical suggestion.

On the 22nd of May, 1832, a Committee of Secrecy was appointed by the House of Commons to inquire into the expediency of renewing the charter of the Bank of England, and into the system on which banks of issue in England and Wales are conducted. On the 11th of August following this Committee delivered its report, which was printed by order of the House, and it is to this report, with the evidence and documents by which it was accompanied, that the public is mainly indebted for the establishment of consistent and sound principles upon the subject of banking. Containing, as it does, the opinions of our first authorities in matters of political science, and the recorded experience of practical men, this paper was of the greatest advantage to the members of

the legislature while discussing and determining the provisions of the act which received the royal assent on the 29th of August, 1833, for renewing the charter of the Bank of England for ten years from the 1st of August, 1834 (3 & 4 Wm. IV. c. 98), a brief analysis of which act it may be advisable here to insert; and we shall afterwards insert the provisions of the Bank Charter Act of 1844.

The act of 1833 provided that no association, having more than six partners, shall issue bills or notes, payable on demand, in London, or within sixty-five miles of that city, during the continuance of the exclusive privileges granted to the Governor and Company of the Bank of England. But associations, "although consisting of more than six persons, may carry on the trade or business of banking in London, or within sixty-five miles thereof, provided they do not borrow, owe, or take up in England any sum of money upon their bills or notes payable on demand, or at any less time than six months from the borrowing thereof, during the continuance of the privileges granted by this act to the Governor and Company of the Bank of England."

All promissory notes of the Bank of England, payable on demand, issued at any place in England, out of London, where the business of banking shall be carried on for or on behalf of the Bank, must be made payable at the place where such notes are issued; and it is made unlawful for the Governor and Company of the Bank of England, or for any person on their behalf, to issue, at any place out of London, any promissory note payable on demand, not made payable at the place where the same is issued.

§ 6 provided that Bank of England notes shall be a legal tender except at the Bank and its branches.

§ 7 exempted from the usury laws bills not having more than three months to run. § 8 provided for the preparation of weekly returns of bullion and of notes in circulation, to be sent to the Chancellor of the Exchequer, and published in the *London Gazette*; § 9, for the repayment of one-fourth part of the debt due from the public to the Bank (14,686,800l.): § 10 contained provisions for reducing the

capital stock of the Bank from 14,553,000*l.* to 10,914,750*l.*, by dividing amongst the proprietors the sum of 3,638,250*l.*, at the rate of 25*l.* for every 100*l.* stock; and §§ 11 and 12 exempted the governor, deputy-governor, &c., and proprietors, from being disqualified by such reduction in the amount of their stock.

By § 13 the Bank, in consideration of the privileges given it by this act, was required to deduct 120,000*l.* annually on the sum payable to it for the management of the funded debt. § 14 continued to the Bank the privileges conferred on it by 39 & 40 Geo. III. c. 28, and other acts, except in so far as they were altered by the present act, such privileges to be subject to redemption "at any time upon twelve months' notice to be given after the 1st of August, 1855;" and upon repayment by parliament of the sum of 11,015,100*l.*, due from the public to the Bank, and some other conditions being fulfilled, the privilege granted by this act was to cease. This clause is re-enacted in the act of 1844.

The clause which provides that notes of the Bank of England and its branches shall be a legal tender in every part of England, as explained by the act already recited, excited considerable interest among commercial men, some of whom expressed alarm at the provision. The expression "legal tender," although certainly correct, was an unfortunate term, as it seemed to threaten the mercantile public with the return of those days of ruinous uncertainty in regard to currency, which were so commonly experienced throughout the period when, under the Restriction Act, Bank of England notes were in effect a legal tender in every part of the kingdom. The only possible effect of an injurious kind which can attend this regulation is, that in the event of such a conjuncture as shall render the Bank unable to meet its engagements, the holder of its notes, who may chance to be removed one or two days' journey from London or the place where they were issued, may be placed in an unfavourable position for exchanging them for specie.

The principal advantage to follow from the enactment is this:—that it absolves

the Bank of England from the expensive necessity in which it was formerly placed, of providing bullion to meet every run that might be made upon all the country bankers in every part of the kingdom, who, under the present law, may pay the demands on them in Bank of England notes, instead of in specie, as they were formerly obliged to do.

The repayment of one-fourth of the debt due from the public to the Bank was made by an assignment of 3 per cent. stock, which was previously held by the commissioners for the reduction of the national debt, but no division of the amount has yet been made among the proprietors of the Bank capital, who have judged it most advisable to leave the sum thus rendered available as capital in the hands of the directors.

The principal advantage conferred on the Bank by the legislature consisted in the restriction that prevents any other establishment, having more than six partners, from issuing notes payable on demand in or within sixty-five miles of London.

We learn from the evidence given before the secret committee by certain of the Bank directors, that the principle upon which they proceed in regulating their issues is to have as much coin and bullion in their coffers as may amount to a third part of the liabilities of the Bank, including sums deposited as well as notes in circulation. But when, by an over-issue of paper, prices have been so driven up that gold has become the only profitable species of remittance abroad, experience shows us that the drain upon the Bank thus arising may and will be carried to an extent far beyond the mere redundancy of currency afloat, and the demand for specie may, in such a case, be carried beyond the amount thus arbitrarily chosen for the security of the Bank. Where a vigilant course of management is pursued, a small comparative amount of gold would always suffice to restore the equilibrium, when deranged by the accidental changes of commerce; and where a different system is pursued, it is difficult to say what quantity of the precious metals, short of the whole liabilities of the Bank, will be found ade-

quate to that end. The action of the public upon the Bank in 1825, when the largest amount of bullion ever before possessed by it was so near being wholly exhausted, shows the necessity of adopting some less questionable rule than the arbitrary one-third.

The Bank of England acts as the agent of the Government in the management of the national debt. It receives and registers transfers of stock from one public creditor to another, and makes the quarterly payments of the dividends. Previous to the passing of the act of 1833, the Bank received from the public in payment for this service the sum of 248,000*l.* per annum. Of this amount 120,000*l.* per annum was abated by that act; and by the act of 1844 only 180,000*l.* is to be paid in future.

The balances of money belonging to the State are kept in the Bank, which in this respect performs the ordinary functions of a private banker. The alteration made a few years ago in the constitution of the department of the Exchequer added somewhat to this branch of the Bank's business. Many individuals likewise use this establishment as a place of deposit for their money; but as the Bank directors do not give the same facilities to their customers as they receive from private bankers, the proportion of mercantile men who have drawing accounts with the Bank is comparatively small.

Branch banks were established by the Bank of England, in 1826, 1827, and 1829, at Swansea, Gloucester, Manchester, Birmingham, Liverpool, Bristol, Leeds, Exeter, Newcastle, Hull, and Norwich; and in 1834, at Portsmouth and Plymouth, when the branch at Exeter was closed; and more recently a branch has been opened at Leicester. These establishments have not hitherto been productive of much profit to the corporation, but have proved very convenient to the public. They facilitate the remittance of money between London and the country, and enable commercial men to avoid the expense and risk which previously were attached to those operations. As the Branch banks do not permit individuals to overdraw

their accounts, and make no allowance of interest upon deposits, they are not calculated greatly to interfere with the profits of private establishments, whose customers enjoy those advantages. The business of these branches principally consists in discounting bills, issuing notes which are payable in London and in the place where they are issued, and in transmitting money to and from London. To encourage the circulation of their own notes, these branches are accustomed to discount at a more advantageous rate than for others bills brought to them by such country bankers as do not themselves issue notes.

The profits of the Bank of England are derived from discounts on commercial bills; interest on Exchequer Bills, of which a large amount is usually held; the interest upon the capital stock in the hands of Government, the allowance for managing the public debt, interest on loans, on mortgages, dividends on stock in the public funds, profit on purchases of bullion, and some minor sources of income.

The principal heads of receipt in 1832 were as follows:—Interest on commercial bills 130,695*l.*; on exchequer bills 204,109*l.*; the dead weight annuity 451,515*l.*; interest on capital received from government 446,502*l.*; allowance for management of the public debt 251,896*l.*; interest on private loans 56,941*l.*; on mortgages 60,684*l.*; making, with some other items, a total of 1,689,176*l.* In the same year the expenses, including losses by forgery and sundry items, were 428,674*l.*; the composition for stamp-duty was 70,875*l.*; and 1,164,235*l.* was divided amongst the proprietors. In the first of the above heads is included the expense for conducting the business of the funded debt 164,143*l.*; the expense attending the circulation of promissory notes and post bills, 106,092*l.*; and the expense of the banking department, of which the proportion for the public accounts may be estimated at 10,000*l.*; making a total of 339,400*l.* Before the passing of the act of 1844, the Bank paid to the Stamp Office upwards of 70,000*l.* annually as a composition for the duties upon its notes and bills; but the notes of the Bank

are now wholly exempted from stamp duty.

In 1832 the Bank maintained an establishment of nearly one thousand officers, clerks, porters, and messengers; and the number has since been increased. In the same year the salary of 940 persons employed at the Bank and its branches amounted to 211,903*l.*, or, on an average, to 225*l.* each; and 193 persons, principally superannuated clerks, received 31,243*l.* per annum, or 161*l.* each.

In 1694 the stockholders divided 8 per cent., which was increased to 9 per cent. in the following year; from that time to 1729 the annual dividend fluctuated between 5½ and 9 per cent.; for the next eighteen years the rate was 5½ to 6 per cent.; in 1747 it fell to 5 per cent.; in 1753 to 4½ per cent., which was the lowest rate of profit since its first establishment; from 1767 to 1806 the dividend was gradually increased to 7 per cent., and from 1807 to 1822 the proprietors divided 10 per cent. annually: in 1823 the rate was lowered to 8 per cent., and has so continued to the present time. In addition to these payments, the stockholders have at various times received bonuses to the amount of 6,694,380*l.*, or 57½ per cent. upon the subscribed capital.

The directors of the Bank of England have always declared and acted upon the opinion that secrecy in regard to its condition is important to its prosperity. To such an extent has this feeling been carried, that year after year large and increasing dividends were declared and paid, without the exhibition to the proprietors of a single figure by which such a course could be justified, the simple recommendation of the directors having always satisfied the proprietors as to the policy of preserving this mystery. The printing of the Report of the Committee of Secrecy in 1832 revealed the true condition of the corporation, and it is not likely that the directors will ever again be allowed to involve its proceedings in the same degree of concealment.

The Bank of England Charter Act (7 and 8 Vict. c. 32), which received the royal assent on the 19th of July, 1844, remodels the Bank and establishes a separate department for the issue of notes.

This Act is entitled "An Act to regulate the Issue of Bank Notes, and for giving to the Governor and Company of the Bank of England certain privileges for a limited period."

"After the 31st of August, 1844, the issue of promissory notes of the governor and company of the Bank of England, payable on demand, shall be separated and thenceforth kept wholly distinct from the general banking business; and the business of and relating to such issue shall be thenceforth conducted and carried on by the said governor and company in a separate department, to be called 'The Issue Department of the Bank of England;' and it shall be lawful for the court of directors of the said governor and company, if they shall think fit, to appoint a committee or committees of directors for the conduct and management of such issue department of the Bank of England, and from time to time to remove the members, and define, alter, and regulate the constitution and powers of such committee, as they shall think fit, subject to any by-laws, rules, or regulations which may be made for that purpose: provided, nevertheless, that the said issue department shall always be kept separate and distinct from the banking department of the said governor and company." (§ 1.)

On the 31st of August, 1844, "There shall be transferred, appropriated, and set apart by the governor and company to the issue department of the Bank of England securities to the value of 14,000,000*l.*, whereof the debt due by the public to the said governor and company shall be and be deemed a part; and there shall also at the same time be transferred, appropriated, and set apart by the said governor and company to the said issue department so much of the gold coin and gold and silver bullion then held by the Bank of England as shall not be required by the banking department thereof; and thereupon there shall be delivered out of the said issue department into the said banking department of the Bank of England such an amount of Bank of England notes as, together with the Bank of England notes then in circulation, shall be equal to the aggregate amount of the

securities, coin, and bullion so transferred to the said issue department of the Bank of England; and the whole amount of Bank of England notes then in circulation, including those delivered to the banking department of the Bank of England as aforesaid, shall be deemed to be issued on the credit of such securities, coin, and bullion so appropriated and set apart to the said issue department; and from thenceforth it shall not be lawful for the said governor and company to increase the amount of securities for the time being in the said issue department, save as hereinafter is mentioned, but it shall be lawful for the said governor and company to diminish the amount of such securities, and again to increase the same to any sum not exceeding in the whole the sum of 14,000,000*l.*, and so from time to time as they shall see occasion; and from and after such transfer and appropriation to the said issue department as aforesaid it shall not be lawful for the said governor and company to issue Bank of England notes, either into the banking department of the Bank of England, or to any persons or person whatsoever, save in exchange for other Bank of England notes, or for gold coin or for gold or silver bullion received or purchased for the said issue department under the provisions of this act, or in exchange for securities acquired and taken in the said issue department under the provisions herein contained: provided always, that it shall be lawful for the said governor and company in their banking department to issue all such Bank of England notes as they shall at any time receive from the said issue department or otherwise, in the same manner in all respects as such issue would be lawful to any other person or persons." (§ 2.)

§ 3 fixes the proportion of silver bullion to be retained in the issue department, and on which bank notes may be issued at one-fourth part of the gold coin and bullion, and not to exceed that proportion.

§ 4 provides that all persons may demand of the issue department notes in exchange for gold bullion at the rate of 3*l.* 17*s.* 9*d.* per ounce of standard gold, to be melted and assayed at the expense

of the parties tendering such gold by persons approved of by the bank.

§ 5 gives the bank power to increase securities in the issue department, and issue additional notes in case any banker who, on the 6th of May, 1844, was issuing his own notes, shall afterwards cease to issue. Under these circumstances the bank may be empowered by an order in council to increase the amount of securities beyond the sum of 14,000,000*l.*, and thereupon to issue additional Bank of England notes to an amount not exceeding such increased amount of securities specified in such order in council, and so from time to time; provided always, "that such increased amount of securities specified in such order in council shall in no case exceed the proportion of two-thirds the amount of bank-notes which the banker so ceasing to issue may have been authorized to issue under the provisions of this act; and every such order in council shall be published in the next succeeding 'London Gazette.'"

Accounts are to be rendered weekly by the Bank of England, which are to be published in the 'London Gazette.' (§ 6.)

§ 7 exempts the bank from stamp duty upon their notes.

In consequence of the various privileges granted by the act, the bank is to deduct 180,000*l.* from the expense of managing the unfunded debt, instead of the sum of 120,000*l.* fixed by 3 & 4 Will. IV. c. 98 (§ 8); and further, by § 9 the bank is to allow the public the net profits of increased circulation allowed under § 5 beyond the sum of 14,000,000*l.* fixed by the act.

§ 10 prohibits the establishment of any new bank of issue. "No person other than a banker who on the 6th of May, 1844, was lawfully issuing his own bank notes, shall make or issue bank notes in any part of the United Kingdom;" and § 11 regulates the mode of issuing notes by those bankers who issued notes on the 6th of May, 1844, who may "continue to issue such notes to the extent and under the conditions hereinafter mentioned, but not further or otherwise; and the right of any company or partnership to continue to issue such notes shall not be in any manner prejudiced or affected by any

change which may hereafter take place in the personal composition of such company or partnership, either by the transfer of any shares or share therein, or by the admission of any new partner or member thereto, or by the retirement of any present partner or member therefrom: provided always, that it shall not be lawful for any company or partnership now consisting of only six, or less than six persons, to issue bank notes at any time after the number of partners therein shall exceed six in the whole." Bankers ceasing to issue notes may not resume issuing, either by agreement with the bank or otherwise. (§ 12.) And existing banks of issue are to continue under strict limitations. Their average circulation for twelve weeks preceding the 27th of April is to be ascertained, when the commissioners, or any two of them, shall certify the amount to the banker, who may then issue his own bank notes after the passing of this Act; "provided that such banker shall not at any time after the 10th of October, 1844, have in circulation upon the average of a period of four weeks a greater amount of notes than the amount so certified. (§ 13.) There is a provision in § 14 for banks which had become united within the twelve weeks preceding the 27th of April, and such united banks may obtain a certificate of their joint circulation, which the united bank will be authorized to issue: a copy of the certificate is to be published in the 'London Gazette.' (§ 15.) In case banks become united after the passing of this Act, the commissioners are also to certify the amount of bank notes which each bank was authorized to issue; and the united bank is to have the benefit of issuing to the amount of their joint circulation. (§ 16.)

A penalty is imposed on banks issuing in excess, the amount of the penalty to be equal to the excess of the average monthly circulation. (§ 17.)

After the 19th of October, 1844, issuing banks are to render accounts to the Commissioners of Stamps and Taxes of the amount of their notes in circulation on every day during the week, and also an account of the average amount of the bank notes in circulation during the

same week, and a like average for every period of four weeks, and the amount of bank notes which such banker is authorized to issue under the Act is to be given in such return. The weekly average is to be published in the 'London Gazette.' The penalty for making a false return is 100*l.* (§ 18): and § 20 empowers the Commissioners of Stamps and Taxes, with the consent of the Treasury, to cause the books of bankers containing accounts of their bank notes in circulation to be inspected; and there is a penalty of 100*l.* for refusing to allow such inspection.

All bankers are to return their names once a year (in the first fifteen days of January) to the Stamp-office, and a copy of such return is to be published in some newspaper circulating within each town or county where the business is carried on. (§ 21.)

All bankers who shall be liable by law to take out a licence from the Commissioners of Stamps and Taxes to authorize the issuing of notes or bills, are to take out a separate licence for every place at which they issue notes or bills; but there is a proviso in favour of bankers who had four such licences in force on the 6th of May, 1844, and they will not be called upon to take out a larger number. (§ 22.)

Compensation is made to certain bankers named in the schedule C who had ceased to issue their own notes under certain agreements with the Bank of England before the passing of this Act. (§ 23.)

The Bank of England is allowed to compound with issuing banks which agree to issue Bank of England notes as a consideration for the relinquishment of the privilege of issuing private bank notes; the composition to be at the rate of one per cent. on the amount of Bank of England notes issued, but such issues to be restricted according to § 13.

Banks within sixty-five miles of London may draw, accept, or endorse bills, not being payable to bearer on demand. (§ 26.)

§ 27 relates to the expiration of the Bank Charter. "At any time upon twelve months' notice to be given after the 1st of August, 1855, and upon repay-

ment by parliament to the governor and company, or their successors, of the sum of 11,015,100*l.*, being the debt now due from the public to the said governor and company, without any deduction, discount, or abatement whatsoever, and upon payment to the said governor and company and their successors, of all arrears of the sum of 100,000*l.* per annum," and other moneys due to the Bank, "then and in such case, and not till then, the said exclusive privileges of banking granted by this Act shall cease and determine at the expiration of such notice of twelve months."

The Gazette of September 14th, 1844, contained the first account of the affairs of the Bank pursuant to the above act: it showed the state of the Bank for the week ending the 7th of September, and was as follows:—

Dr.	ISSUE DEPARTMENT.	£.
Notes issued.....	28,351,295	
Cr.		
Government debt .....	11,015,100	
Other securities.....	2,984,900	
Gold coin and        £		
bullion.....	12,657,208	
Silver bullion...	1,694,087	
	<hr/>	
	14,351,295	
	<hr/>	
	28,351,295	

Dr.	BANKING DEPARTMENT.	£.
Proprietors' capital.....	14,553,000	
Rest .....	3,564,729	
Public deposits (including Ex- chequer, Savings' Banks, Commissioners of National Debt, and Dividend Ac- counts).....	3,630,809	
Other Deposits .....	8,644,348	
Seven-day and other bills ...	1,030,354	
	<hr/>	
	31,423,240	

Cr.	14,554,834	
Government securities (in- cluding dead weight annu- ity).....	14,554,834	
Other securities .....	7,835,616	
Notes .....	8,175,025	
Gold and silver coin .....	857,765	
	<hr/>	
	31,423,240	

The most important parts of the act 7

& 8 Vict. c. 32, it will be seen are:—1. The separation of the issuing and the banking functions of the Bank of England, with strict limitations as to its issues, and a different system of account and different officers for each department. The Bank has the power of issuing notes on a fixed amount of securities to the value of 14,000,000*l.*, and any issue beyond this sum must be founded on bullion only. As the stock of bullion in the bank increases or diminishes, so will likewise the issues of bank-notes. 2. The next point of importance is the absolute prohibition of any new bank of issue and the limitation of the issues of all existing banks of issue to an average of the circulation of each bank for the twelve weeks preceding April 12th, 1844. 3. Joint-stock banks in London are empowered to accept bills for any period, instead of such bills being confined to dates of not less than six months. Such are the chief features of the system now in operation, the practical working of which, in the course of the ensuing ten years, will be watched with much interest. Another remodelling of the Bank may then again take place according to the act, and an opportunity again be afforded for effecting further changes in banking institutions.

IV. *Banking, as carried on by private establishments and joint-stock associations in London, in other parts of England and in Ireland.*—The Italian merchants who, under the name of Lombards, settled in England during the thirteenth century, and previously to that time the Jews, performed the greatest part of the money business of the country. They were not, however, bankers in the modern acceptation of the word, and in fact the business of banking does not appear to have been carried on among us earlier than the middle of the seventeenth century. The goldsmiths of London, who before that time had restricted their trade in money to the purchase and sale of foreign coin, then extended their business by borrowing and lending money. The latter part of their business—that of lending—was principally transacted with the king, to whom they made advances on the security of the taxes. They allowed

interest to the individuals from whom they borrowed, and the receipts which they gave for deposits passed from hand to hand in the same manner as Bank-notes have since circulated.

The taking of interest for the use of money was not rendered legal in England until 1546, when the rate that could be demanded was fixed at 10 per cent. In 1624 the legal rate was reduced to 8 per cent., and a further reduction to 6 per cent. took place in 1651. At this rate it still remains in Ireland, but was lowered in England to 5 per cent. in 1714, at which it now continues. These limitations have always been productive of evil. Money-lenders by profession will always be ready to take advantage of the necessities of borrowers, and being left without competitors among the more conscientious capitalists, demand not only a monopoly price for the use of their money, but also a further sum proportioned to the risk and penalties attending discovery. The Lombard merchants were accustomed to demand 20 per cent. interest, and even more, according to the urgency of the borrower's wants.

The merchants of London had been used to deposit their money for security at the Mint in the Tower of London, whence they drew it out as occasion demanded; but in the year 1640 King Charles I. took possession of 200,000*l.* thus lodged, which of course put a stop to that practice. This state of things preceded and most probably led to the extension of the business of the goldsmiths, as just explained.

This business soon became very considerable, and was found convenient to the government. In 1672 King Charles II., who then owed 1,328,526*l.* to the bankers, borrowed at 8 per cent., shut up the Exchequer and for a time refused to pay either principal or interest, thus causing great distress among all classes of people. Yielding to the clamour raised against this dishonesty, the king at length consented to pay 6 per cent. interest, but the principal sum was not discharged until forty years afterwards.

The number of private banks in London about 1793 was fifty-six, of which only twenty-four are now in existence.

The number is at present seventy-four including seven colonial and eight joint-stock banks. There are three private banking-houses still carrying on business which were established before the Bank of England. These are Child's, established in 1663; Hoare's, in 1680; and Snow's, in 1685. The London bankers continued to issue notes for some time after the closing of the Exchequer, but they have long since ceased to do so, acting solely as depositaries of money, discounters of bills, and agents for bankers established in the country. No restriction has ever existed which prevents private banks in London, if they have not more than six partners, from issuing their notes payable to bearer; that they have ceased to do so has arisen from the conviction that paper money, issued on the security of only a small number of individuals, could not circulate profitably in competition with that of a powerful joint-stock association.

The business of a bank may be classed under the following heads:—1. Discounting bills of exchange. 2. Advancing money on cash credits. 3. Receiving deposits at interest. 4. Keeping current accounts for customers. 5. Issuing notes. 6. Acting as agents for others. Private bankers in London do not make any charge of commission to their customers, and generally grant facilities to them, both by discounting bills and by temporary loans, either with or without security. Even where this kind of accommodation is not required, it is almost a matter of necessity for every merchant or trader carrying on considerable business to have an account with a banker, through whom he makes his payments, and who will take from him the daily trouble of presenting bills and cheques for payment.

At various times some banking establishments in London have adopted the principle of allowing interest upon deposits placed in their hands. The practice of most of the joint-stock banks is to allow a moderate interest, depending on the market-value of money, for any sum exceeding 100*l.*, provided that it is not withdrawn by the depositor in less than three months. Some of these banks receive deposits as low as 10*l.*; and



others allow a higher rate of interest on small than on larger sums. It is expressly stipulated by bankers in these cases that the rate of interest on the sum deposited will be liable to fluctuation according to the state of the money-market. The joint-stock banks also allow interest at the rate of one or two per cent. on the smallest balance on current accounts, if the balance has stood for a month; and some of them allow interest on the average daily balance for a month.

The profits of London bankers are principally derived from discounting mercantile bills, either for their customers, or, through the intervention of brokers, for other parties. They have great facility as regards the security of this business, from the unreserved confidence which they are accustomed to place in one another as to the credit of their respective customers.

The great amount of money transactions daily carried on in London, and which has been estimated at nearly five millions, has led to the invention of a simple and ingenious method for economizing the use of money, which is carried into effect at an establishment set on foot by the private bankers in 1770, called the Clearing-house. The present Clearing-house is situated in the corner of a court at the back of the Guardian Insurance Office, in Lombard Street. The business was previously conducted in an apartment in the banking-house of Messrs. Smith, Payne, and Smiths, and still earlier at the banking-house of Messrs. Barnetts and Co., both in Lombard Street. The cheques and bills of exchange, on the authority of which a great part of the money paid and received by bankers is made, are taken from each of the clearing-bankers to the Clearing-house several times in the day, and the cheques and bills drawn on one banker are cancelled by those which he holds on others. The joint-stock banks are excluded from this association of private bankers. Some of the private bankers, from the nature of their business, do not require the aid which these clearances afford, and others are too distant to maintain the necessary rapidity of communication with the Clearing-house. An authentic detail

of the arrangements of the Clearing-house has recently been published by Mr. Tate ('The System of the London Bankers' Clearances explained and exemplified'), to which we must refer those who desire something more than a general idea of the system. The Clearing-house is fitted up with desks for each of the present twenty-seven clearing-bankers, whose names, taking the first of each firm, are arranged in alphabetical order as follows, over each desk:—

Barclay	Glyn	Rogers
Barnard	Hanbury	Smith
Barnetts	Hankey	Spooner
Bosanquet	Jones	Stevenson
Brown	Lubbock	Stone
Curries	Masterman	Veres
Denison	Prescott	Weston
Dorrien	Price	Williams
Fuller	Roberts	Willis.

Mr. Tate says, "The rapidity with which the last charges are required to be entered, and the bustle which is created by their swift distribution through the room, are difficult to be conceived. It is, then, on the point of striking four, and on days of heavy business, that the beauty of the alphabetical arrangement of the clearers' desk is to be seen. All the distributors are moving the same way round the room, with no further interference than may arise from the more active pressing upon or outstripping the slower of their fellow-assistants. With equal celerity are their last credits entered by the clearers. A minute or two having passed, all the noise has ceased. The deputy-clearers have left with the last charges on their houses; the clearers are silently occupied in casting up the amounts of the accounts in their books, balancing them, and entering the differences in their balance-sheets, until at length announcements begin to be heard of the probable amounts to be received or paid, as a preparation for the final settlement. The four o'clock balances having been entered in the balance-sheet, each clearer goes round to check and mark off his accounts with the rest, with 'I charge you,' or 'I credit you,' according as each balance is in his favour or against him."

In the Appendix to the Second Report of the Select Committee of the House of Commons on Banks, there is a return of the payments made through the Clearing-house for the year 1839, and, omitting all sums under 100*l.*, the total was 954,401,600*l.* The average for each day would consequently be rather more than 3,000,000*l.* sterling (the actual payments range from 1,500,000*l.* to 6,250,000*l.*), while that of the sums actually paid was about 213,000*l.* It has, however, sometimes happened that a single house has had to pay above half a million of money. The payments through the Clearing-house of three bankers, in 1839, ranged from 100,000,000*l.* to 107,000,000*l.* each. In 1840, according to a pamphlet on the currency by the late Mr. Leatham, banker, of Wakefield, the returns of the Clearing-house reached to the enormous sum of 975,500,000*l.*

There were very few country bankers established previous to the American war, but after the conclusion of that contest their numbers increased greatly. In 1793 they were subjected to heavy losses, consequent upon the breaking out of the French war, and twenty-two of them became bankrupt. The passing of the Bank Restriction Act was the signal for the formation of many establishments for banking in the country. In 1809, the first year when bankers were required to take out a licence, the number issued was 702, which gradually rose to 940 in 1814. In 1813-14 the number of licences taken out by country bankers for issuing notes was 733, and the number of partners in these banks was 2234. In 1814 and the two following years, eighty-nine country bankers failed, and their numbers fell off greatly. In each of the years 1825 and 1826 there were about 800 annual licences issued, but their numbers were again reduced by eighty bankruptcies, and in 1832 only 636 licences were demanded. From 1839 to 1843 inclusive the number of bankers gazetted as bankrupts was 82; and the number of banks of issue which failed during the same period was 29. In August, 1844, there were 117 private banks of issue in the United Kingdom; and there were 162 private banks which were not banks of

issue. The number of private banks from 1826 to 1842 is given at the end of this section.

Country banks in England are all of them banks of deposit and of discount; they act as agents for the remittance of money to and from London, and for effecting payments between different parts of the kingdom. A large number of them are also banks of issue, and their notes are in many cases made payable at some banking-house in London, as well as at the place where they are issued. The new regulations under which the issues of banks of all kinds are placed by 7 & 8 Vict. c. 32, have already been given in the analysis of the act, §§ 10 to 17 inclusive. The First Lord of the Treasury, in his speech of May 20, 1844, adopted them avowedly on the ground that, in periods when the principle of convertibility has been endangered, the country banks were unwilling or incompetent to reduce their issues.

A moderate rate of interest, from 2 to 2½ per cent., is allowed by country bankers upon deposits which remain with them for any period beyond six months: some make this allowance for shorter periods. Where a depositor has also a drawing account, the balance is struck every six months, and the interest due upon the average is placed to his credit. Upon drawing accounts, a commission, usually of a quarter per cent., is charged on all payments. The country banker, on his part, pays his London agent for the trouble which he occasions, either by keeping a certain sum of money in his hands without interest, or by allowing a commission on the payments made for his account, or by a fixed annual payment in lieu of the same.

The portion of funds in their hands arising from deposits and issues which is not required for discounting bills and making advances in the country, is invested in government or mercantile securities in London, which, in the event of a contraction of deposits or issues, can be made immediately available.

The establishment of banks throughout the kingdom has contributed materially to the growth of trade. Without them it would hardly be possible for a manufac-

turer employing any great number of hands to collect the money required to pay the weekly wages of his people. It is not a valid argument against their utility that occasionally, by the facilities they have afforded, the tendency to over-trading has been encouraged.

In 1826 the 7 Geo. IV. c. 6, provided for the gradual withdrawal of small notes from circulation, by prohibiting the future issue of any stamps for that purpose, and declared that their issue should wholly cease on the 5th of April, 1829. It was on the occasion of the introduction of this act that the Bank of England undertook, at the recommendation of government, to establish branches of its own body in different parts of the country.

The practical effect of this measure of preventing the circulation of notes below 5*l.* value, has been to lessep, in an important degree, the issues of country bankers. Previously to their suppression, the small notes formed more than one-half the circulation of country banks, whose issues have not, however, been reduced in that proportion, owing to an enlarged amount of 5*l.* notes being taken by the public: the reduction, on the whole, has been estimated at 30 per cent. It is generally acknowledged by country bankers themselves, that the description of notes withdrawn formed by far the most dangerous part of their issues; that in the event of any *run* or *panic*, the notes of 1*l.* value were always first brought in for payment, and that, in consequence, the situation of the country banker is now one of much greater security than it was while small notes were issued. The country bank notes in circulation in 1810 amounted to 23,893,868*l.* In July, 1844, the issues of private banks was 4,624,179*l.* and of joint-stock banks 3,340,326*l.*, being together less than eight millions. In February of the same year there were forty-three provincial bankers which, by an arrangement with the Bank of England, agreed to issue the notes of that establishment exclusively, to the amount of 2,429,000*l.*

Up to 1832 no local circulation existed in the great manufacturing and trading county of Lancashire, where Bank of England notes alone passed from hand to hand, but a great number of payments

were adjusted by means of bills of exchange drawn upon or made payable by London houses. Subsequently some of the joint-stock banks of Manchester and Liverpool issued notes.

By 3 & 4 Will. IV. c. 83, banks issuing promissory notes were required, for the first time, to make quarterly returns to the Stamp-office of the average amount of notes in circulation; the quarterly average to be founded on the amount in circulation at the end of each week. The 4 & 5 Vict. c. 50, required the returns to be made at the end of every four weeks. The 7 & 8 Vict. c. 32, § 18, requires returns to be made of the notes in circulation on every day in each week; the average for the week; and a like average for every four weeks, and, as will be seen, gives the Commissioners of Stamps the power of inspecting bankers' books.

At the time of passing the law for the suppression of small notes in England, provision was made by the legislature in the manner already described, for the establishment of joint-stock banks, which should be banks of issue, at any distance beyond sixty-five miles from London. In consequence of this act above one hundred joint-stock banking companies have been formed in England. About one hundred and thirty-eight private banks have been merged in joint-stock banks. The following table shows the number of joint-stock banks, &c. in the United Kingdom in January, 1839:—

	No. of Banks.	Branches, &c.	No. of Partners.
England...	105	648	32,142
Scotland...	29	117	6,971
Ireland....	18	143	11,755
Total ..	152	903	50,868

Of the 29 Scotch banks, one established by act of parliament, and four by royal charter, are not required to lodge lists of partners.

According to some valuable tables in the 'Bankers' Magazine' for August, 1844, the number of joint-stock banks in the United Kingdom at that date was as follows:—England and Wales, 106; Scotland, 20; Ireland, 10; and there were besides 10 joint-stock Colonial banks in London.

The following is given in a Parliamentary return as the number of private banks and joint-stock banks from 1826 to 1842:—

	Private Banks.	Joint-stock Banks.
1826	554	••
1827	465	6
1828	456	7
1829	460	11
1830	439	15
1831	436	19
1832	424	25
1833	416	35
1834	416	47
1835	411	55
1836	407	100
1837	351	107
1838	341	104
1839	332	108
1840	332	113
1841	321	115
1842	311	118

The average quarterly circulation of the private banks and joint-stock banks from September, 1834, to July, 1844, was as follows:—

Quarter ending Sept.	Private Banks. £	Joint-stock Banks. £
1834	8,370,423	1,783,689
1835	7,912,587	2,508,036
1836	7,764,824	3,969,121
1837	6,701,996	3,440,053
1838	7,083,811	4,281,151
1839	6,917,606	4,167,313
1840	6,350,801	3,630,285
1841	5,768,136	3,311,941
1842	5,098,259	2,819,749
1843	4,288,180	2,763,302

20th July,

1844	4,624,179	3,340,326
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The system upon which the business of a joint-stock bank is conducted is the same generally as that pursued by private establishments; but it is, of course, more obligatory upon managers acting for others to adhere rigidly to system, than it is for an individual or a small number of partners without the same degree of responsibility.

The disasters which befel several of the joint-stock banks ought long ago to have led to some general measure for placing these institutions on a safe footing. In 1837 there scarcely existed any legisla-

tive restrictions on the operation of the act 7 Geo. IV. c. 46, permitting the establishment of joint-stock banks. A joint-stock bank could start into existence, whether for the purpose of deposit or issue, or of both, without any preliminary obligation beyond the payment of a licence-duty and the registration of the names of shareholders at the Stamp Office. A secret committee of the House of Commons, appointed in 1836 to inquire into the operation of the above-mentioned act, reported that the law did not require a revision of the deed of settlement by any competent authority; that there was no restriction on the amount of nominal capital, which varied from 100,000*l.* to 5,000,000*l.*, and in one case an unlimited power was reserved of issuing shares to any extent; that banking operations might be commenced before the whole or any certain amount of shares be subscribed for; that the law did not enforce any rule with respect to the nominal amount of shares, which varied from 5*l.* to 1000*l.*, nor with the amount of paid-up capital before the commencement of business, which varied from 5*l.* to 105*l.*, and that the law was not sufficiently stringent to ensure to the public that the names registered at the Stamp Office were the names of *bonâ fide* proprietors, who, having signed the deed of settlement, were responsible to the public. The committee also pointed out that the law did not limit the number of branches, or their distance from the central bank; and that the obligation of making their notes payable at the places of issue was disregarded.

By 1 Vict. c. 73, shareholders in joint-stock banks were rendered liable only to the extent of their shares, instead of the whole of their property being answerable; but up to the end of the parliamentary session of 1844, the joint-stock bank system laboured under a number of disadvantages, some of which are removed by the act 7 & 8 Vict. c. 113, "to regulate joint-stock banks in England." Every new Company is required by this act to present a petition to the Queen in Council, signed by at least seven of the shareholders, praying that letters patent may be granted to them, and specifying very fully the

names and abodes of all the partners of the proposed company; the proposed name of the bank, and where the business is to be carried on; the proposed amount of capital stock, and the means by which it is to be raised; the amount already paid up, and where and how invested; the proposed number of shares, and the amount of each share, not being less than 100*l*. The petition will be referred to the Board of Trade, who will report as to the provisions of the act having been complied with. The deed of partnership must be prepared according to a form to be approved of by the Board of Trade. Banks already existing may be remodelled under the provisions of the act. Joint-stock banks have now the privilege of suing and being sued. The acts of an unauthorized partner formerly bound all the rest of the partners; but now it is only the acts of an individual director properly appointed which are binding on the shareholders.

A national bank was established by charter in Ireland in 1783, with the same privileges as those granted to the Bank of England by the act of 1708. The original capital of this corporation was 600,000*l*., and was lent to government at 4 per cent. interest. The management is vested in a governor, deputy-governor, and fifteen directors. In 1809 1,000,000*l*. was added to its capital. This sum, which was raised by subscription among the proprietors at the rate of 125 per cent., was also lent to government at 5 per cent. interest. In 1821 the capital was augmented to 3,000,000*l*., and a further prolongation of the charter was granted in 1808.

The system adopted by and in regard to the Bank of England has on various occasions been extended to the Bank of Ireland. In 1797, when it became necessary to restrict the Bank of England from paying its notes in gold, that measure was, almost necessarily, adopted in Ireland, and in consequence the issue of the Bank of Ireland notes increased from 780,000*l*., which it was in 1797, to upwards of 4,000,000*l*., before the Suspension Act was ultimately repealed.

The total circulation of the Bank of Ireland for the week ending April 27,

1844, was 3,618,600*l*., of which sum 1,917,000*l*. was circulated by the branches. The bullion in the bank coffers was 1,037,100*l*. and the total securities amounted to 7,250,700*l*., consisting of 4,226,500*l*. public securities; 1,844,400*l*. notes and bills discounted; and 1,179,800*l*. of other securities. The total deposits were 3,555,300*l*., of which 2,484,100*l*. were private, and 1,071,200*l*. public deposits. The Bank neither grants cash credits nor allows interest on deposits.

The suspension of specie payments led, as in England, to the establishment of numerous private banks in Ireland; fifty of these were in operation in 1804. The power of issuing notes was greatly abused by these banks, and the mischief thus occasioned was aggravated by other individuals issuing notes also. It was given in evidence by several persons before a committee of the House of Commons, that about this time there were 295 issuers of paper money in Ireland, whose notes were in some cases put forth for a few shillings, and occasionally even as low as 6*d*. and 3*d*. each. These issuers consisted of merchants, shopkeepers, and petty dealers of all descriptions. The consequences might easily have been foreseen; forgeries and frauds innumerable were committed, and it became necessary to put a legal stop to the practice. The mischief recoiled with severity upon the bankers, so that of the fifty who carried on business in 1804, only nineteen remained in 1812. A few had prudently withdrawn from business, but the remainder had failed; and of the nineteen here mentioned eleven became bankrupt in 1820. The number of private banks in Ireland is now only four.

The mischief and misery thus occasioned called loudly for the interference of government, and in 1821 an act was passed (1 & 2 Geo. IV. c. 72) by which joint-stock banking companies were allowed to be established at a distance of fifty Irish (sixty-three statute) miles from Dublin. This district comprises a population of about 1,500,000, and the Bank of Ireland has only six branches, while in the various towns of Ireland beyond sixty-three miles from Dublin there are above one hundred branches of joint-stock

banks. The Bank of Ireland has altogether twenty-four branches.

The act 1 & 2 Geo. IV. was at first inoperative, in consequence of its omitting to repeal several vexatious restrictions; and it was not until after the passing of a new act in 1824, by which this error was remedied, that a joint-stock banking company was established in Belfast with a capital of half a million. This was followed in 1825 by the formation of the Provincial Bank of Ireland, with a subscribed capital of two millions, one-fourth part of which has been paid up by the shareholders. The shareholders are principally resident in England, where the management of the bank is conducted, the chief officer being in London. This association carries on business in thirty-six of the principal cities and towns of Ireland beyond the prescribed distance from Dublin. Each branch is managed, under the control of the directors, by an agent, with the advice and assistance of two or more gentlemen residing in the district, each of whom holds at least ten shares in the bank. The system of business adopted is the same as is followed by the Scotch banks. The benefit to the country from the introduction and prudent employment of so much capital has been very great.

The notes of the Provincial Bank are received by the Irish government in payment for duties and taxes equally with the notes of the Bank of Ireland.

The great grievance of the Irish joint-stock banks is, that beyond sixty-three miles from Dublin they can neither draw nor accept bills for a less sum than fifty pounds, nor for any sum upon demand; and all such banks in Dublin, or within sixty-three miles, can neither issue notes nor accept or draw bills at all. When the charter of the Bank of Ireland again comes under the consideration of the legislature, some of these objectionable disabilities will probably be modified or removed.

There are ten joint-stock banks in Ireland, including the Bank of Ireland, and branch banks are established in one hundred and fifty-six different towns.

In the same year with the formation of the Provincial Bank, the directors of the Bank of Ireland, in 1825, began to estab-

lish branches in the country. The notes issued from these branches were not at first payable except in Dublin; but this inconvenience was rectified by the act 9 Geo. IV. c. 81, which makes it obligatory on all banks to pay their notes at the places where they are issued. This regulation, which does not apply to banks in Scotland, renders it necessary to keep at all times a considerable supply of gold at the branches; and from the political state of Ireland, this necessity is more particularly pressing. In 1828, during a 'run,' the Provincial Bank of Ireland sent over from the head-quarters in London no less a sum than 700,000*l.* in gold to its branches. In Scotland the notes would have been payable at the head-office, where specie is easier provided.

The law of 1826, forbidding the issue of notes under 5*l.* value, does not extend to Ireland.

Bank notes are not a legal tender in Ireland.

*V. Scotch system of Banking.*—There are three incorporated public banks in Scotland: one of these, called the Bank of Scotland, was established by act of the Scottish parliament in 1695; another, called the Royal Bank of Scotland, received a royal charter in 1727; and the third, the British Linen Company, was incorporated in 1746, for the purpose of undertaking the manufacture of linen, but now operates as a banking company only; its capital is 500,000*l.* None of the Scotch banks have exclusive privileges resembling those of the Bank of England and Bank of Ireland.

The capital of the Bank of Scotland was originally 1,200,000*l.* Scots, or 100,000*l.* sterling money, divided into 1200 shares. This capital has since been augmented at different times, and now amounts to 1,500,000*l.* sterling, but of this sum only one million has been paid up by the subscribers. This bank began to establish branches in 1696, and issued notes for 1*l.* each, in 1704. It also began very early to receive deposits, for which it allowed interest; and in 1729 it introduced the plan of granting credits on cash accounts, which now forms a principal feature of the Scotch banking system.

The nature of these cash accounts con-

sists in the bank giving credit on loan, to the extent of a sum agreed upon, to any individual or house of business that can procure two or more persons, of undoubted credit and property, to become surety for the repayment, on demand, of the sum credited, with interest. When a person has obtained this credit, he may employ the amount in his business, paying interest only upon the sum which he actually uses, and having interest allowed to him from the day of repaying any part of the loan. These loans are advanced in the notes of the bank, whose advantage from the system consists in the call which these credits produce for the issue of their paper, and from the opportunity which they afford for the profitable employment of part of their deposits. In order to render this part of their business as advantageous and secure as possible, it is necessary that the credits should be frequently operated upon; and if the managers of the bank find that they are used as dead loans to produce interest only, or that the operations of the borrower are infrequent, so that the amount of notes called for is inconsiderable during the year, they will speedily put an end to the credit, it being to the interest of the bank to keep up an active circulation of its notes.

These cash accounts are found to be very advantageous to traders, by supplying an additional capital, for the use of which they pay only in proportion to the amount of it which they employ.

The management of the Bank of Scotland is vested in a governor, deputy-governor, twelve ordinary and twelve extraordinary directors. They are chosen every year by the stockholders having 250*l.* of stock or upwards. The management of the various branches, which are opened in all the principal towns in Scotland, is confided to cashiers or agents.

The Royal Bank of Scotland had at first a capital of 150,000*l.*, which has since been increased to 2,000,000*l.* The system of business adopted by this establishment, and by the British Linen Company, is the same as that of the Bank of Scotland, which has already been described.

The act of 1708, which restrained any association having more than six part-

ners from issuing notes payable to bearer, did not extend to Scotland, where banking companies, with numerous partners dealing on a joint-stock, have long existed. "There is no limitation upon the number of partners of which a banking company in Scotland may consist."—"The partners of all banking companies are bound, jointly and severally, so that each partner is liable, to the whole extent of his fortune, for the whole debts of the company. A creditor in Scotland is empowered to attach the real and heritable, as well as the personal estate of his debtor, for payment of personal debts, among which may be classed debts due by bills and promissory notes; and recourse may be had, for the purpose of procuring payment, to each description of property at the same time."—(*Commons' Committee on Scotch Banks*, 1826.)

In 1793 and 1825, when so many bankruptcies took place among country bankers in England, not one Scotch bank failed to make good its engagements. The Lords' Committee on Scotch Banks, in 1826, reported that "the banks of Scotland, whether chartered or joint-stock companies, or private establishments, have for more than a century exhibited a stability which the committee believe to be unexampled in the history of banking; that they supported themselves from 1797 to 1812 without any protection from the restrictions by which the Bank of England and that of Ireland were relieved from cash payments; that there was little demand for gold during the late embarrassments in the circulation; and that in the whole period of their establishment there are not more than two or three instances of bankruptcy, and as, during the whole of this period, a large portion of their issues consisted almost entirely of notes not exceeding 1*l.* or 1*l.* 1*s.*, there is the strongest reason for concluding, that as far as respects the banks of Scotland, the issue of paper of that description has been found compatible with the highest degree of solidity." In another respect the law which regulates the system of banking in Scotland differs from that in force in England. The act of 1826, which put an end to the circulation of notes under 5*l.*, does not extend to Scotland,

where a considerable part of the circulating medium of the country is composed of notes of 1*l.* value. The 9 Geo. IV. c. 65, prohibits the introduction of Scotch notes under 5*l.* into England.

All banking establishments in Scotland take in deposits and allow interest upon very small sums lodged with them, a fact which may account for the small number of savings' banks in that part of the kingdom. The interest allowed varies according to the current market-rate. The rate has sometimes been as high as 4 per cent., and as low as 2 per cent. There is said to be a sort of understanding that less than 5*l.* shall not be paid in or drawn out; but the projected Dunedin\* bank proposes to pay or receive any sums, however small, charging only a "clerking fee" of 4*s.* 2*d.* on each hundred transactions. This bank is intended to command the agency of the Scottish joint-stock banks, and will not have branches. The Bank of Scotland about the middle of 1844 resolved not to allow interest upon cash deposited with them, until it has been at least a month in their possession. It is stated in the Report of the Committee of the House of Commons of 1826, to which the subject of banking in Scotland and Ireland was referred, that the aggregate amount of the sums deposited with the Scotch banks was then from twenty to twenty-one millions, and there is reason for believing that the sum has since been greatly increased. It appeared from the inquiries of the committee just mentioned, that about one-half of the depositors in Scotch banks are persons in the same rank and station as the depositors in savings' banks in England and Ireland.

All the chartered and private banks in Scotland have agents in London upon whom they draw bills, but their notes are not made payable except in Scotland.

There are at present (September, 1844) twenty joint-stock banks in Scotland, including the three chartered companies. The greater part of the Scotch banks have branches in connexion with the principal establishment, each branch being managed by an agent acting under the immediate directions of his employers, and giving

security to them for his conduct. The Bank of Scotland has 33 branches; the British Linen Company 44 branches; the Commercial Bank 53; and the total number of branch banks established in Scotland is 313, having been 133 in 1826. Two banks have upwards of 1500 partners.

The Scotch bankers have a practice which is rigorously adhered to, of exchanging each other's notes four times a week and immediately paying the balances. For that purpose each bank has an agent in Edinburgh, by whom this arrangement is conducted. The balances are paid by bills at ten days' date on London. The state of these balances is looked at with great attention: if anything at all wrong in the conduct of a bank were thereby indicated, the others would instantly interfere and force the party to alter its proceedings. This course has proved efficient in guarding against any over-issue of bank notes, and in preventing the consequent depreciation of their value. The plan of periodically exchanging notes with each other is partially acted upon in some districts in England. The projectors of the Dunedin propose to reduce the exchange with London from twenty days to eleven.

It is the intention of the Government at an early period to deal with the question of banking in Scotland and Ireland, and it is even said that an attempt will be made to assimilate the currency to that of England.

In August, 1844, the bank circulation of the United Kingdom was as follows:—

	ENGLAND.	£	£
Bank of England	21,448,000		
Private Banks	4,624,179		
Joint-Stock Banks	3,340,326		
			29,412,505
SCOTLAND.			
Chartered, Private, and			
Joint-Stock Banks . . .	2,903,322		
IRELAND.			
Bank of Ireland	3,440,700		
Private and Joint-Stock Banks	1,974,284		
			5,414,984
Total . . . . .	37,730,811		

\* Gaelic name for Edinburgh.



VI. *System of Banking in the United States of America.*—The banking business is followed in the United States of America to a very great extent; and, as regards some of its principles, upon a system which requires notice. The first bank in the United States was that of North America, established by the old Congress in 1781, and afterwards continued by the State of Pennsylvania. In 1791 a Bank of the United States was incorporated by Congress, with a capital of ten million dollars, in shares of 400 dollars, of which one-fourth was required to be paid in gold and silver, and three-fourths in public stock. The principal office of the corporation was in Philadelphia, and branches were established in other places. When this bank was first established, the whole number of banks in the Union was only twelve, whose authorized capital was nearly nineteen million dollars. In 1811, when the first charter expired, the number of banks had increased to fifty-nine, whose capital rather exceeded  $52\frac{1}{2}$  million dollars. The charter was not renewed; but almost all the banks in the Union having failed in 1814, a second Bank of the United States was chartered in 1816 for twenty years. Its capital was thirty-five millions of dollars, in shares of 100 dollars each. The capital was subscribed in specie and stock, in the same proportion as in the first bank, and the stock the bank might sell at the rate of two million dollars a year. One-fifth of the shares was subscribed by the government. The management was confided to twenty-five directors, who were stockholders; five of the number were annually nominated by the President of the United States, and the rest were elected by the stockholders. The question of re-chartering this bank was violently opposed, and in 1833 General Jackson, then President, removed the government deposits from the bank. In 1836 a further blow was aimed at its credit by a Treasury circular directing that the deposits of money on account of the public land sales should be paid in specie. The charter expiring in 1836, the bank was then dissolved, after ineffectual attempts of both Houses of two successive Congresses to counteract the oppo-

sition of the President and to renew its charter. The bank is now merely a bank of the State of Pennsylvania. The number of banks in the States at different periods during the last half-century is shown in the following table:—

No. of Banks.		Capital authorised. Dollars.
1792	12	18,935,000
1801	33	33,550,000
1811	89	52,610,101
1820	368	137,210,611
1830	330	145,191,668
1838	679	317,636,778

The number of banks and branches in January, 1840, was 800, having been 840 on the 1st of January, 1839; and the whole bank capital in 1840 was 323,000,000 dollars. In 1837 and 1839 there was a general suspension of specie payments by the banks throughout the Union. The suspension in 1839 was commenced on the 9th of October by the United States Bank of Pennsylvania. The total number of banks then in the Union was 959, or, deducting 109 branches, 850. Of this latter number 343 entirely suspended; 62 suspended in part; 56 failed or were discontinued; 498 did not suspend; and 48 of those which had suspended resumed specie payments by January, 1840.

It may well be imagined that so great and rapid an extension of the banking business could not have arisen altogether from the wants of the community, but must have been based upon a spirit of speculation adverse to its interests. It is therefore not surprising that shortly after the war broke out between the United States and this country in 1812, a great portion of the banks, including all south and west of New England, were obliged to suspend their specie payments. For adopting this measure the American bankers could not adduce the same reason as that which led to the Restriction Act in England in 1797: they must have been placed in so unfavourable a position solely through the ruinous competition which had led each of them to force as large an amount of its notes upon the public as possible. By this means the precious metals were in a manner forced out of the country; and when the war broke out, and confidence began to be shaken,

the bankers were wholly unprepared for the change.

The dissolution of the United States Bank in 1811 had favoured this short-sighted policy of private bankers, by widening the sphere of their business, without adding in any way to their means of conducting it. On the contrary, a very large proportion of the stock of the United States Bank, having been held by foreigners, was remitted abroad, and this being a remittance suddenly called for out of the ordinary course of commerce, was in great part effected by the exportation of the precious metals. The suppression of the United States Bank had been attended by the further consequence of calling new banking establishments into action in order to fill the chasm. In the four years from January 1, 1811, to January 1, 1815, no fewer than 120 new banks were chartered, with nominal capitals amounting in the aggregate to forty millions of dollars.

During the general suspension of specie payments in the United States, in 1812, the paper currency was increased about fifty per cent., and its value was depreciated on the average about twenty per cent. as compared with bullion.

It was not until after the organization of the New Bank of the United States, in January, 1817, that delegates from the banks in the principal commercial states having met at Philadelphia to consider of the circumstances in which their establishments were placed, determined upon simultaneously resuming payments in specie, a measure greatly assisted by the importation of a large amount of bullion by the newly-established public bank.

This course was followed by such a contraction of their issues on the part of private bankers as occasioned great and wide-spread commercial distress. Debts contracted in the depreciated currency became suddenly payable at its par value, while the facilities usually obtained from the bankers for their liquidation were as suddenly stopped by a refusal of discounts. It is at such moments as these, when the returning good sense of a people leads them to restore the soundness of their currency, that the full evils of a departure from true principles are felt. Up

to a certain point the depreciation of the currency may be, and frequently is, accompanied by a delusive show of prosperity, but which is sure in the end to have all its fallacy revealed. Mr. Gallatin states that the number of banks that failed between 1811 and 1830, in different parts of the Union, was 165, which had possessed capitals to the amount in the aggregate of near thirty millions of dollars. In some of these cases the loss fell for the greatest part upon the holders of bank-notes and on depositors; the stockholders had "paid for their shares in their own promissory notes, which remaining in the hands of the bank they afterwards redeemed by delivering up to be cancelled the stock in their names, and thus suffered no loss."

With one solitary exception—that of the bank of the late Mr. Girard in Philadelphia—all the private banks established in the United States are joint-stock companies incorporated by law, with fixed capitals, to the extent of which only the stockholders are in most cases responsible. The business of all consists in receiving deposits, discounting mercantile bills, lending money on security, and issuing notes.

The legislatures of several of the states have endeavoured to provide for the prudent management of the banks by limiting the amount of their issues in proportion to their capitals, requiring that not less than a certain proportion (generally 50 per cent.) of their nominal capitals shall be actually paid up in gold or silver, and existing in their vaults, before they begin business, and by rendering the directors of each bank personally responsible for the consequences of breaking these and other rules formed for the protection of the public. But Professor Tucker, writing in 1839, says that the preliminary condition was evaded "by means of specie temporarily borrowed of other banks for the purpose," and that the capital of nearly all the banks is in great part nominal.

In Massachusetts the banks are restrained from issuing notes for a less sum than one dollar. The states of Pennsylvania, Maryland, and Virginia have forbidden the issue of notes of a lower de-

nomination than five dollars. All notes are payable in specie; and if such payment be refused, the bank is liable to pay the holder damages at the rate of 24 per cent. per annum for the time payment is refused or delayed. The banking system of Massachusetts has been much extolled, and in particular the banks of the town of Boston have been held up as models for imitation.

In New York, Maryland, and some other of the states, the charter of a bank is forfeited from the moment that it refuses to pay its notes or deposits in specie.

The excessive number of banks in the New England States (in 1838 there were 321 out of 821 in the whole Union), and the consequent excessive competition, leads to acts and devices for the purpose of engrossing a larger share of the circulation, which is injurious to the public and places the banks in great danger.

Of the banks in the State of Rhode Island, which were 60 in number in 1838, Professor Tucker remarks:—"Many have perhaps but one salaried officer, a cashier, whose annual stipend ranges from 300 to 600 dollars: indeed many of its bankers can be regarded as little more than cashiers and book-keepers for particular manufactories."

There are twenty incorporated banks in the city of New York, some of which paid a bonus to the state for their acts of incorporation. Their capitals amount to twelve millions of dollars. All the banks existing in New York issue notes for one dollar and upwards. All the banks discount mercantile bills. No interest is allowed on deposits; and in fact, the activity of the trade of the city is so great in comparison with the capitals of the merchants, that deposits for such a length of time as would justify the payment of interest are unknown.

An Act was passed by the legislature of the state of New York, in April, 1829, called the 'Safety Fund Act,' to the provisions of which "all monied corporations thereafter to be created or renewed are subjected." Under one of its provisions, every such corporation is obliged, on the 1st of January in each year, to pay to the treasurer of the state one-half or one

per cent., at the option of the managers, on the amount of the capital stock of the bank, and to continue such payment until three per cent. in the whole shall be paid: this fund to remain perpetual in the hands of the treasurer, and to be solely appropriated to the payment of the debts of such banking corporations as may become insolvent. In the meanwhile the proportion of interest arising from its payments is carried to the credit of each bank, after providing for the payment of salaries to certain commissioners who are appointed to investigate at least four times in every year the affairs of each banking corporation in the state. These commissioners are invested with extensive powers to examine the officers of the banks upon oath, to inspect the books, &c. They are empowered to visit the banks subject to the act, and to arrest the business of any bank discovered to be insolvent, by application to the court of chancery. The investigations of the commissioners into the state of any bank can be made oftener than once a quarter on the joint application of any three banks. Commissioners for inspecting the condition of the banks have been appointed by the legislatures of Vermont, Maine, New Hampshire, Connecticut, and Rhode Island. But they have not adopted the Safety Fund scheme, which has practically afforded no security against suspension; and in 1837 the general suspension of specie payments began in the state of New York, the only state in which the system then prevailed. Comparing ninety Safety Fund banks in the state of New York, with the banks of Pennsylvania, it was found in 1837, that the proportion of specie in circulation was 25 per cent. for the New York banks, and 22 per cent. for the Pennsylvania banks, but in their banking operations the Pennsylvania banks had been decidedly most prudent. Eight New York banks, not subjected to the Safety Fund law, had specie in proportion to their circulation, to the amount of 45 per cent.

In all cases where, from the date of their incorporation, and the determination of the directors of any bank not to bring themselves under the provisions of this act, they do not contribute to the Safety

Fund, those directors are held personally liable to the full extent of all losses which the shareholders or creditors of the bank under their charge may sustain by reason of their departure from the course of management prescribed by their act of incorporation.

In providing for the payment of notes in specie, the legislatures have not insisted that the coin of the United States shall alone be used; and it has been the practice to adopt a schedule of prices at which the coins of different countries shall be considered good tender of payment.

In July, 1838, a law was passed which gives to partners in banking associations a limited responsibility, on condition of their depositing securities, to the amount of the notes issued.

**BANKRUPT** (*banque-routier*, a bankrupt, and *banque-route*, bankruptcy—from *bancus*, the table or counter of a tradesman, and *ruptus*, broken) is a merchant or trader whose property and effects, on his becoming insolvent, are distributed among his creditors, under that system of statutory regulations called the Bankrupt Laws. These laws, which originated in England with the statute 34 & 35 Henry VIII. c. 4, were first mainly directed against the frauds of traders, who acquired the merchandise and goods of others, and then fled to foreign countries, or lived in extravagance, and eluded and defrauded their creditors. The bankrupt was consequently treated as a criminal offender; and until within a few years, the not duly surrendering his property under a commission of bankruptcy, when summoned, was a capital felony. The bankrupt laws are now, and have for some time past, been regarded as a system of legislation, having the double object of enforcing a complete discovery and equitable distribution of the property and effects of an insolvent trader, and of conferring on the trader the reciprocal advantage of security of person and a discharge from all future claims of his creditors. These laws were till lately spread over a voluminous accumulation of statutes, referring to and depending on each other, and often creating confusion and inconvenience from their diffuse and contradictory provisions. These statutes

were, under the auspices of Lord Eldon, repealed, and their provisions altered and consolidated into the 6 Geo. IV. c. 16, which introduced important alterations and simplifications.

The 1 & 2 William IV. c. 56, constituting "the Court of Bankruptcy," materially changed the mode of administration of this law; it entirely removed the jurisdiction in the first instance in cases of bankruptcy from the Court of Chancery to the new Court of Bankruptcy, reserving only an appeal from the Judges of that court to the Lord Chancellor, as to matters of law and equity and questions of evidence. Instead of the commission under the Great Seal, which formerly issued to a certain number of barristers-at-law who were permanent "Commissioners of Bankruptcy," the above Act substituted a *fiat* of bankruptcy; and other important alterations were also introduced.

These statutes, however, aided by several subsequent acts, have proved inadequate to the protection of mercantile credit, and the great bulk of bankrupt assets, leaving very small dividends to creditors, were found to disappear by the concealment of property, colourable sales, secret transfers, and other fraudulent devices. In consequence, the state of this branch of the insolvent laws continued to be sedulously pressed on the attention of parliament by the leading merchants of London and Manchester, and the result of their urgent representations of the immense losses the trading world annually suffered (*fifty millions per annum* was the alleged amount) from unprincipled bankruptcies, has been the "Bankrupt Consolidation Act, 1849." The new act commenced October 1st, 1849, and effects very marked improvements on the pre-existing system.

Among the amendments of the Act the following may be distinctly enumerated. 1. Those relating to insolvent debtors, which facilitate an honest surrender of their property. 2. Those relating to creditors, which increase their control over the persons or property of their debtors. Lastly, provisions to increase the general efficiency of the Court of Bankruptcy, by augment-

ing its primary jurisdiction, and thereby saving the delay and expense of appeals to the Lord Chancellor.

The improvement in the law effected by the Consolidation Act relating to the conduct of debtors, is probably of greater importance to society and the morality of trade, than any other portion of it. For the first time, a broad distinction has been drawn by law between honest and fraudulent debtors.

Traders who at an early period of their insolvency place their affairs before their creditors, and obtain their assent (in one case of three-fifths, and in another of six-sevenths, in number and value) to such proposals as they are able to make, can obtain protection for their persons, and can wind up their affairs either by trustees, without the interference of the Court, or under the control of the Court, with the aid of an official assignee; but in either case without the stigma of bankruptcy, or having their affairs revealed in open court. If, however, bankruptcy cannot be avoided, then, after hearing the case and judging of the conduct of the bankrupt during his examination, it is left to the Commissioners of the Court to grant either a first-class certificate, which declares the trader's inability to pay his debts has arisen from misfortune only, or a second-class, in which it is declared to have arisen *partly* from misfortune; or a third-class, in which it is declared not to have arisen from misfortune. These provisions, it has been anticipated, will be sufficient to induce in many cases a much earlier surrender of property to creditors than has been heretofore practised, and will also relieve an unfortunate man, driven by a vindictive creditor, from that disgrace which has attached indiscriminately to all.

A complete exposition of the new Act, with all the decisions on the provisions of those it has consolidated, and the explanation of the forms of procedure, belong to works that treat specially of legal matters. But viewed as a mode of settling the claims of creditors against their debtors, the bankrupt law of England is an important subject in our public economy.

The first peculiarity in the bankrupt laws is, that only those persons can have the benefit of them who are particularly described, namely, bankers, brokers, and persons using the trade or profession of a scrivener, receiving other men's moneys or estate into their trust or custody; and persons insuring ships, or their freight, or other matters, against perils of the sea; warehousemen, wharfingers, packers, builders, carpenters, shipwrights, victuallers, keepers of inns, taverns, hotels, or coffee-houses, dyers, printers, bleachers, fullers, calenderers, cattle or sheep salesmen, livery-stable keepers, coach proprietors, carriers, ship-owners, auctioneers, apothecaries, market-gardeners, cowkeepers, brickmakers, alum-makers, lime-burners, millers, and all persons using the trade of merchandise by way of bargaining, exchange, bartering, commission, consignment, or otherwise in gross or by retail; and all persons who, either for themselves or as agents or factors for others, seek their living by buying and selling, or by buying or letting for hire, or by the workmanship of goods or commodities, shall be deemed traders liable to become bankrupts; provided that no farmer, grazier, common labourer or workman for hire, receiver-general of the taxes, or member of or subscriber to any incorporated commercial or trading companies, established by charter or act of parliament, shall be deemed, as such, a trader liable, by virtue of that act, to become bankrupt. Other persons, who might with as good reason claim the benefit of being made bankrupts, must be satisfied with the relief that they can obtain as *non-traders* under the insolvent acts.

In order that a man shall become liable to be made a bankrupt, he must commit, as it is termed, an act of bankruptcy.

These acts are of two sorts: first, those which are only acts of bankruptcy when done with intent to defeat or delay his creditors; secondly, certain acts which have that effect without reference to any intention. With respect to the first class it is enacted, that if any such trader shall depart this realm, or being out of this realm shall remain abroad, or depart from his dwelling-house, or otherwise

absent himself, or begin to keep his house, or suffer himself to be arrested, or his goods, money, or chattels to be attached or sequestered, or taken in execution, or make any fraudulent grant or conveyance of any of his lands, tenements, goods, or chattels, or make any fraudulent surrender of any of his copyhold lands or tenements, or make any fraudulent gift, delivery, or transfer of any of his goods or chattels; every such trader doing, suffering, procuring, executing, permitting, making, or causing to be made, any of the acts, deeds, or matters aforesaid, with intent to defeat or delay his creditors, shall be deemed thereby to have committed an act of bankruptcy.

The acts here enumerated have reference to a trader's intention to defeat and delay his creditors; and if such intention is legally established, he may, by virtue of such acts, be made a bankrupt. The word *realm* means the jurisdiction of the courts of England, and therefore departing to Ireland or Scotland, or a British colony, which are out of such jurisdiction, may constitute an act of bankruptcy.

As to a trader being arrested for a debt, this is only an act of bankruptcy in itself when he can pay the debt, but prefers going to prison with a view to defeat his general creditors. A compulsory going to prison under an arrest is only an act of bankruptcy when the imprisonment endures twenty-one days, as mentioned hereafter. It is also an act of bankruptcy if a man keep out of the way with intent to defeat and delay his creditors, in consequence of which he is outlawed for want of due appearance to legal process.

An assignment by deed of all a trader's effects to trustees for the benefit of all his creditors is legally an act of bankruptcy. But if all the creditors (as often happens) assent to and sign such an instrument, it becomes valid, for they have all agreed not to consider it an act of bankruptcy. And such an assignment shall not be deemed an act of bankruptcy unless a fiat issue against the trader within six calendar months from the execution of such arrangement by such trader; provided the assignment be executed by every trustee within fifteen days from the date

of the execution by the trader, and the execution is attested and publicly notified in the manner pointed out by the statute.

Generally when a trader makes over or parts with any portion of his property, it depends on the circumstances in which he then is, and to the intention, as shown by those circumstances and the nature of the transfer, whether it shall be considered an act of bankruptcy or not. Voluntary transfers of his property, particularly if he is in embarrassed circumstances, are presumptive evidence of an intention to defeat or delay his creditors or some of them, and are therefore acts of bankruptcy.

The acts of bankruptcy above enumerated depend upon the trader's intention in doing the act. The following are the acts which constitute acts of bankruptcy whether done with or without an intention to defeat or delay creditors.

If any trader, having been arrested or committed to prison for debt, or on any attachment for non-payment of money, shall upon such or any other arrest or commitment for debt, or non-payment of money, or upon any detention for debt, lie in prison for twenty-one days, or having been arrested or committed to prison for any other cause, shall lie in prison for twenty-one days after any detainer for debt lodged against him and not discharged, every such trader shall be thereby deemed to have committed an act of bankruptcy: or if any such trader having been arrested, committed, or detained for debt, shall escape, every such trader shall be deemed thereby to have committed an act of bankruptcy from the time of such arrest, commitment, or detention.

The bankrupt law does not make the mere circumstance of being arrested an act of bankruptcy, except when a trader suffers himself to be arrested for a debt not due, or a debt which he is able to pay, as above stated. The presumption of insolvency only arises from the fact of lying in prison twenty-one days without being able to procure bail, or of escaping out of prison to avoid payment of the debt.

Under the old law, no effectual provision was made for enabling an honest

debtor who believed himself insolvent, voluntarily to subject himself to the bankrupt law, and thereby to produce an equal distribution of his property among his creditors. To remedy this defect, it was provided by 6 Geo. IV. c. 16, § 6, and continued by 5 & 6 Vict. c. 122, § 22, that if a trader file with the secretary of bankrupts a declaration of his insolvency, signed by himself, and attested by an attorney, the secretary of bankrupts shall sign a memorandum which shall authorize the insertion in the *Gazette* of such declaration, and such declaration shall then become an act of bankruptcy; but the *fiat* upon it must issue within two months after filing the declaration.

In addition to the above acts of bankruptcy, the circumstance of a debtor filing a petition for his discharge under the Insolvent Debtors' Act is by the statute 7 Geo. IV. c. 57, declared an act of bankruptcy, on which a *fiat* may be issued. And by 7 & 8 Vict. c. 96, § 41, the Lord Chancellor may issue a *fiat* against a trader upon his petition made to the Lord Chancellor, when such trader has filed a declaration of insolvency in the manner and form prescribed by the statute in that case made and provided relating to bankrupts.

When the creditor of any trader has made an affidavit of his debt in the proper court, and of his having delivered a written account of such debt, and demanded payment thereof from his debtor, the court may summon the debtor and require him to say whether he admits the demand or not, but he is also allowed to make a deposition upon oath in writing that he believes he has a good defence to such demand, or to some part thereof, which he must specify. If the trader does not appear on such summons, or shall appear and refuse to admit the demand, and not make such deposition as above mentioned, in such case if he does not pay or compound the debt within seven days, or give security for its payment, he shall be considered to have committed an act of bankruptcy. If the trader admits the debt, he must pay or compound or secure it within the time fixed; otherwise he will be adjudged to have committed an act of bankruptcy.

As traders who are members of parliament are not liable to personal arrest for debt during the time of privilege, some special provisions were requisite as to acts of bankruptcy committed by such persons. Accordingly, § 9 of the bankrupt act, 6 Geo. IV. c. 16, provides that if any trader having privilege of parliament commit any of the before-mentioned acts of bankruptcy, a commission (*fiat*) of bankruptcy may issue against him, and the commissioners and all other persons acting under the *fiat*, may proceed as against other bankrupts; but such trader shall not be subject to be arrested during the time of privilege, except in cases made felony by the bankrupt law. By the 52 Geo. III. c. 144, whenever a member shall be found and declared a bankrupt, he shall be for twelve months incapable of sitting and voting. At the expiration of twelve months the bankruptcy must be certified to the Speaker, and the election of the member is void, unless the *fiat* be superseded or the creditors paid in full. There is no legal obstacle to a bankrupt retaining his seat in the interval, unless the fact of the bankruptcy be brought before the notice of the House by petition; and if any decree or order of a Court of Equity or Bankruptcy shall have been pronounced, ordering any such trader, having privilege of parliament, to pay money, and such trader shall disobey the same, the person entitled to receive it may apply to the court to fix a peremptory day for the payment: and if such trader shall then neglect to pay the same, he shall be deemed to have committed an act of bankruptcy; and any of his creditors may sue out a *fiat*, and proceed as against other bankrupts.

The above are the various and the only acts which, before the passing of 5 & 6 Vict. c. 122, rendered a trader liable to a *fiat* of bankruptcy; but by this statute, the provisions of which have been continued by the Consolidation Act of 1849, an act of bankruptcy is also committed when a trader neglects paying, securing, or compounding a judgment debt, upon which the plaintiff might sue out execution (§ 20); also if a trader disobeys an order of any court of equity,

or order in bankruptcy or lunacy, for payment of money on a peremptory day fixed (§ 21). No other acts, however strongly they may indicate insolvency or fraudulent intention in the trader, are sufficient to render him a bankrupt. The act of bankruptcy may be committed after a trader has ceased trading; for so long as his trading debts remain unpaid, he is amenable to the law of bankruptcy. The debt, however, on which the *fiat* is grounded must of course be one which was contracted during the period of his trading.

The liability to be made a bankrupt appears from what has been stated to be capable either of being a benefit or an injury to the bankrupt. If he is insolvent, it is for his benefit that his creditors should have his property equally distributed among them, and it is for his own benefit that he should be released from all further claims. It may be an injury, if he has a profitable business, the value of which depends on its not being disturbed; for by committing an act of bankruptcy, and being under a temporary disability to meet his engagements, he is liable to have all his property sold for the purpose of being distributed among his creditors. Such forced sales often realise very little, and never produce the full value of a property. By such a sale what is called a business is totally destroyed. An act of bankruptcy may, therefore, ruin a man who would be able to satisfy all his creditors if his property had not been sold. The injury which a man may sustain by being made a bankrupt, or even having proceedings commenced against him under the bankrupt act, has been admitted, and doubtless given rise to the provisions of the 12 & 13 Vict. c. 106, for effecting a private arrangement, either by deed or under the control of the Court.

Under 6 Geo. IV. c. 16, the debt of the petitioning creditor, if there was only one who petitioned, was required to be 100*l.*; if two, 150*l.*; if three or more, 200*l.* By the new act the petitioning creditor's debt must be 50*l.* or upwards; if two creditors petition, their joint debts must be 70*l.*; or if three, 100*l.*

The first step of the petitioning creditor is to ascertain, by a search at the Bankrupt Office, that no proceedings have been previously taken for issuing a *fiat* against the trader. He then takes oath as to the amount of his debt, and his belief that the trader has committed an act of bankruptcy, and then executes a bond in the sum of 200*l.*, binding himself to prove his debt, either before the commissioners or on any trial at law, should the *fiat* be contested; and also to prove that the trader has committed an act of bankruptcy, and to proceed on the *fiat*. An entry is made in an official book, called the "Docket Book," and the petitioning creditor is then said to have "struck a docket" against the trader. A trader against whom a *fiat* has issued may be arrested on proof to the court that there is probable cause for believing that he is about to quit England, or to conceal his goods with intent to defraud his creditors; but any person so arrested may apply for his discharge forthwith.

If the petitioning creditor fails in proving the matters which he undertakes to prove by his bond, and if it appears that the *fiat* was taken out fraudulently or maliciously, the court may, on the petition of the trader, examine the matter, and order satisfaction to be made to the trader; and for that purpose may assign the bond to the trader, who may sue the petitioning creditor thereon in his own name. The assignment of the bond is in such case conclusive evidence of malice against the petitioning creditor; and the injured trader may also, if he please, bring a special action for maliciously suing out the *fiat*, in which he may recover more considerable damages than the mere penalty which could alone be recovered in an action on the bond. An act of bankruptcy concerted between the bankrupt and one of his creditors does not render the *fiat* invalid.

Before the 1 & 2 Will. IV. c. 56, § 12, which abolished commissions, and substituted *fiats* of bankruptcy, the Lord Chancellor used, by a commission under the Great Seal, to appoint such persons as to him seemed fit, who, by virtue of the bankrupt acts and of the commission,



had authority to dispose of the person and property of the bankrupt for the advantage of his creditors. The act 1 & 2 Will. IV. c. 56, constituting the Bankruptcy Court, substituted a simple *fiat* for the commission under the Great Seal, and the *fiat* has been superseded by a petition for an adjudication of bankruptcy without *fiat*, by 12 & 13 Vict. c. 106, § 89.

Upon proof being made, either before the Court of Bankruptcy or the district court, of the petitioning creditor's debt, the trading of the bankrupt, and of an act of bankruptcy of the nature before described, the court formally adjudges the trader to be a bankrupt. The trader adjudged a bankrupt is to have notice thereof before the adjudication is advertised, and is to be allowed seven days to show cause against the adjudication; and if the petitioning creditor's debt, the trading, or the act of bankruptcy, appear insufficient, the adjudication will be annulled. Before the passing of 6 Geo. IV., the trader could at any time dispute the validity of the commission by bringing an action against the assignees; but by that statute the power of doing so was confined to a period within two months after the adjudication; and under the present law the bankrupt cannot dispute the *fiat* or prosecute after twenty-one days from the appearance of the notice of bankruptcy in the 'London Gazette.' If he were not within the United Kingdom, but in some other part of Europe at the date of the adjudication, the period is extended to three months; and to twelve months if he were out of Europe. If the bankrupt die subsequent to the adjudication of bankruptcy, the commissioners are authorized to proceed as if he were living.

If no cause can be shown for annulling the adjudication, the court is required forthwith to give notice of the adjudication in the 'London Gazette,' and thereby to appoint two public meetings for the bankrupt to surrender his property and effects, and to conform to the provisions of the bankrupt act. The commissioners also sign a summons to the bankrupt to surrender, disobedience to which is punishable by transportation for life, or

by imprisonment, with or without hard labour, for any term not exceeding seven years. After such surrender the court is authorized to make such allowance to the bankrupt out of his estate, till he has passed his last examination, as shall be necessary for the support of himself and his family. The bankrupt, after the choice of assignees, is bound to declare upon oath all books and papers relating to his estate, to attend the assignees on reasonable notice, and assist them in making out his accounts. If he refuses to make discovery of his estate and effects, or does not deliver up his property, with all books, papers, &c., relating thereto, he is liable to the same punishment as for not surrendering on the summons of the court; and if he is guilty of destroying or falsifying any of his books, or making false entries, he may be imprisoned for any term not exceeding seven years. After his surrender he may at all times inspect his books and papers, and bring with him two persons to assist him. After he has obtained his certificate, he shall, on demand in writing, attend the assignees to settle any accounts between his estate and any debtor or creditor, or do any act necessary for getting in his estate, being paid 5s. a day by the assignees. The bankrupt is protected from arrest in coming to surrender, and also during the sixty days, or any enlarged time allowed for finishing his examination.

The commissioners sign a warrant of seizure of the bankrupt's effects; and in case there is reason to suspect that property of the bankrupt is concealed in any premises not his own, a justice of the peace is authorized to grant a search-warrant. A bankrupt who conceals goods, &c., to the value of 10*l*. is guilty of felony, and liable to transportation for life, or imprisonment, with or without hard labour, for any term not exceeding seven years.

One of the most important parts of the proceedings in bankruptcy is the proof of debts. Every person to whom the bankrupt is fairly indebted is entitled to establish his debt, and to receive a portion of the bankrupt's estate. All debts legally due from the bankrupt at the time of the

act of bankruptcy are proveable, and also all debts contracted before the issuing of the *fiat*, though subsequent to the act of bankruptcy; provided the creditor, at the time of the debt being contracted, had no knowledge of the act of bankruptcy. There are also provisions in favour of those to whom a debt may become due after the issuing of the *fiat*, upon some contingency provided for by agreement before the trader was made a bankrupt, such as policies of insurance for instance. And all creditors having claims upon the bankrupt which depend on any contingency may, on application to the commissioners, have a value set upon the contingent claim, and be admitted to prove for the debt thus ascertained. A bankrupt who within three months of his bankruptcy obtains goods on credit under false pretences, or removes or conceals goods so obtained, is guilty of a misdemeanour, and on conviction is liable to imprisonment, with or without hard labour, for a term not exceeding two years. With respect to interest on debts, the general rule is, that no interest is provable unless interest was reserved by contract, either express, or arising by implication from the usage of trade, or other circumstances attending the contracting of the debt: where interest is allowed, it is calculated to the date of the *fiat*. By a special provision, bills of exchange and promissory notes are expressly excepted from the general rule, and the holders of those instruments are entitled to prove for interest down to the date of the *fiat*, though interest be not reserved by the instrument. With respect to proof of debts against the partners of a firm, the general rules are—1. that as a creditor of the whole firm may, if he please, sue out a separate *fiat* against any single partner or any number of partners, he may prove his debt in the same manner; 2. a joint creditor of the whole firm may prove against the separate estate of any one partner who is bankrupt, provided there is no partner who is solvent; but if there is a partner who is solvent, then the joint creditors cannot come into competition with the separate creditors of the partner who is bankrupt; 3. where there are no sepa-

rate debts, the joint creditors may of course prove against the estate of the partner who is bankrupt. But for the mere purposes of assenting to or dissenting from the certificate of the bankrupt and of voting for assignees, joint creditors may prove under a separate *fiat*, and separate creditors under a joint *fiat*, without regard to the above rules. If the whole firm become bankrupt, being indebted to an individual partner, such partner cannot prove against the joint estate in competition with the joint creditors; for as they are his own creditors also, he has no right to withdraw any part of the funds available for the payment of their debts; nor can those partners of a firm who remain solvent prove against the separate estate of a member of that firm in competition with his separate creditors, unless the joint creditors be first paid 20s. in the pound and interest.

The investigation of a bankrupt's debts is often a matter of great difficulty, owing to the complicated nature of many mercantile transactions, fraud on the part of the bankrupt, or collusion between him and creditors. Occasionally also many difficult questions arise out of the contending claims of the various creditors of the bankrupt.

Not only is all the property to which the bankrupt himself has a right applicable towards the payment of his creditors, but there are instances in which effects of other parties in his custody, which could not have been retained by the bankrupt had he not become bankrupt, will vest in his assignees under the *fiat*. The principal enactment on this subject, 6 Geo. IV. c. 16, § 72, was intended to apply to cases where persons allowed the use of their property to a failing trader, who is thereby enabled to assume a deceitful appearance of wealth, and obtain credit with the world. Accordingly, if any bankrupt, by the permission and consent of the owner, shall have in his possession, order, or disposition any goods or chattels whereof he was reputed owner, or whereof he had taken on himself the sale or disposition as owner at the time of his bankruptcy, the Court may order the same to be sold for the benefit of the creditors. The provision applies only to

goods and chattels, such as ships, furniture, utensils in trade, stock, bills of exchange, &c. But interests in property of a real nature are not affected by it. The main difficulty, which has occasioned much litigation as to the cases within this clause, is in deciding whether the bankrupt was or was not the reputed owner of the property at the time of his bankruptcy, which is a question of fact determinable by a jury, according to the circumstances of each particular case. [AGENT.]

There are certain classes of creditors which the legislature has peculiarly privileged. The Court is authorized to order that the clerks and servants of the bankrupt (which includes travellers and servants working by the piece) shall receive their wages and salary, for not exceeding three months, and not exceeding 30*l.* out of the estate of the bankrupt; and they are at liberty to prove for the excess. The Court may also order wages, not exceeding forty shillings in amount, to be paid to any labourer or workman to whom the bankrupt is indebted, and they may also prove for the remainder. Under 6 Geo. IV. six months' wages could be paid.

In order to provide for the due distribution of the bankrupt's property among those who have proved his debts, the bankrupt's estate is vested in assignees, who are charged with the collection and distribution of it. They are either, first, *chosen assignees*, or, secondly, *official assignees*, who are permanent officers of the Court of Bankruptcy.

The *chosen assignees* are chosen by the major part, in value, of the creditors who have proved debts to the amount of 10*l.*, subject to a power of rejection on the part of the Court if they are deemed unfit for the office. The first duty of the assignees is to ascertain the validity of the bankruptcy, for which purpose the petitioning creditor is bound to furnish them with all the information in his power. If they ascertain it to be defective, they may apply to the Court to supersede it, which is the only mode in which they can dispute the validity of the *fiat*. The assignees are required to keep an account of all receipts and payments on account of the bankrupt, which every creditor may inspect. The Court may at all times

summon the assignees, and require them to produce all books, papers, and documents relating to the bankruptcy; and, on their default without excuse, may cause the assignees to be brought before them, and on their refusing to produce such books, &c., may commit them to prison until they submit to the order of the Court. If an assignee himself become bankrupt, being indebted to the estate of which he is assignee, and if he obtain his certificate, the certificate will only have the effect of freeing his person from imprisonment; but his future property and effects remain liable for his debts as assignee. The Court has a general jurisdiction over assignees in matters relating to the bankruptcy, and will compel the performance of their duties if neglected. One of their duties is to sell the bankrupt's property, at which sale they cannot themselves in general become purchasers by reason of their fiduciary character. The assignees are entitled to be reimbursed all necessary expenses; and if an accountant is indispensable to assist them, they are entitled to employ one. They have the right of nominating the solicitor to the bankruptcy, and of regulating his continuance or removal; and they may, with the approbation of the commissioners, appoint the bankrupt himself to manage the estate, or carry on the trade on behalf of the creditors, or to aid them in any other matter. The Vice Chancellor has power to remove an assignee, either on his own application or on that of a creditor.

The *official assignees* are merchants, brokers, or accountants, or persons who are or have been engaged in trade, not exceeding thirty in number, who are appointed by the Lord Chancellor to act as official assignees in all bankruptcies. One of them acts with the chosen assignees in every such bankruptcy, giving security for his conduct. The personal estate of the bankrupt, and the rents and proceeds of his real estate, are received by the official assignee, where not otherwise directed by the Court of Bankruptcy or the commissioners; and all stock, moneys, and securities of the bankrupt must be forthwith transferred and paid by the official assignee into the Bank of England, to the

credit of the Accountant in Bankruptcy, subject to such order for keeping an account, or payment, investment, or delivery thereof, as the Court of Bankruptcy shall direct. Till the choice of the chosen assignees, the official assignee acts as sole assignee of the bankrupt. He is not to interfere with the chosen assignees as to the appointment or removal of the solicitor, or as to directing the sale of the bankrupt's estate. The Bankruptcy Court may supply any vacancy in the before-mentioned number of official assignees; and the Court before whom any trader is adjudged bankrupt may order a suitable remuneration to the official assignee out of the bankrupt's estate.

Before the passing of 1 & 2 Wm. IV. c. 56, the commissioners of bankruptcy executed a deed of assignment to the assignees of all the bankrupt's property; but now the whole of the bankrupt's real and personal estate and effects, whether in Great Britain, Ireland, or the colonies, becomes absolutely vested in the assignees by virtue of their appointment; and in case of any new assignee being appointed, it vests in him jointly with those before appointed.

The copyhold estate of the bankrupt does not pass to the assignees by virtue of their mere appointment, but the commissioners are authorized to convey such property to any person who purchases it. The purchaser is to agree and compound with the lord of the manor wherein it is situate for the fines and services, and the lord shall at the next court grant the property to the vendee. Property which the bankrupt holds as trustee for others does not pass to his assignees. Whatever beneficial interest the bankrupt may have in property of his wife passes to his assignees; but property which she enjoys as a *sole trader* in the city of London, or which is settled to her separate use, does not fall within the operation of the bankruptcy.

The general rule is, that all the property of a bankrupt vests in his assignees for the benefit of the creditors from the time of the act of bankruptcy; from which it follows that all dispositions made by the bankrupt of his property between that time and the issuing of the *fiat* are void.

This rule of law occasioned much hardship in many instances to persons who had dealt with the bankrupt in ignorance of his having committed an act of bankruptcy, and it has therefore been materially qualified by various legislative provisions.

If nine-tenths in number and value of the creditors agree at two separate meetings of creditors held after the last examination to accept a composition, the *fiat* may be annulled. Creditors under 20*l.* are not entitled to vote, but their debts are reckoned in value. The bankrupt may be required to take oath that he has not attempted by any unfair means to obtain the assent of his creditors.

When the bankrupt has duly submitted himself to examination by the commissioners, and has surrendered up his property and effects, and in other respects conformed to the requisitions of the Bankrupt Act, he becomes qualified to receive a certificate, which operates as a discharge from all debts due by him when he became a bankrupt, and from all claims and demands made proveable under the *fiat*. The 6 Geo. IV. c. 16, required that the certificate should be signed by four-fifths in number and value of the creditors who had proved debts above 20*l.*; or after six calendar months from the last examination of the bankrupt, either by three-fifths in number and value of such creditors, or by nine-tenths in number of such creditors. But the present law dispenses with the signatures of the creditors, and the court, which is authorized to act in the prosecution of any *fiat* in bankruptcy, holds a public sitting, of which due notice is given to the solicitor of the bankrupt's assignees, and in the 'London Gazette,' and at such sitting any of the creditors may be heard against the certificate being allowed, but the court will judge for itself of the validity of such objections as are made, and either find the bankrupt entitled thereto and allow the same, or refuse or suspend it, or annex such conditions to its allowance as the justice of the case may require. The certificate, the form of which is prescribed in the 12 & 13 Vict. c. 106, will also, as already intimated, express the cause of bankruptcy, and in what degree it has been

occasioned by misfortune or not. Further, the bankrupt is required to make oath in writing that such certificate has been obtained fairly and without fraud. The certificate bars all debts that had been incurred at the time of bankruptcy, unless it be a debt due to the crown, *Bunb.* 202.

In certain cases of misconduct by the bankrupt, the bankrupt is not entitled to his certificate; as, if he has lost in any one day 20*l.* by gambling or wagering, or 200*l.* within one year next preceding his bankruptcy; or if he has, within that period, lost 200*l.* by any contract for the sale and transfer of government or other stock, where such contract was not to be performed within one week of the contract; or if he have, after bankruptcy or in contemplation of bankruptcy, destroyed, altered, mutilated, or falsified any of his books or papers, or been privy to the making any fraudulent entries in his books; or if he has concealed any part of his property; or if he was privy to the proving of any false debt under the fiat, or afterwards knew the same, without disclosing it to the assignees within one month after such knowledge.

The vice-chancellor is empowered, under 12 & 13 Vict. c. 106, § 201-236, if he think fit, any time within six months, on the application of a creditor or assignee, to recall and cancel the certificate; but so harsh a measure requires to be very strongly grounded.

The effect of the certificate is to exempt the bankrupt from the payment of all debts which might have been proved under the fiat, and of course from arrest. A debt provable under the fiat, and a debt barred by the certificate, are convertible terms. A written promise to pay a debt is not barred by the certificate; but any contract or security to induce a creditor to forbear opposition is void, and any creditor of a bankrupt who obtains money, goods, &c. to forbear opposition or to consent to the allowance of the certificate, is liable to a penalty of treble the amount. If any bankrupt is taken in execution for a debt barred by the certificate, any judge, on his producing his certificate, may order him to be discharged without fee. The bankrupt has, after ob-

taining his certificate, in certain cases a claim to an allowance out of his estate. If his estate has paid 10*s.* in the pound to his creditors, he is entitled to five per cent. out of such estate, provided the allowance does not exceed 400*l.* If the estate pays 12*s.* 6*d.* in the pound, he is to be paid 7*l.* 10*s.* per cent., provided such allowance does not exceed 500*l.*; and if his estate pays 15*s.* in the pound, he is to be allowed ten per cent., provided such allowance does not exceed 600*l.* If, at the expiration of twelve months, the estate does not pay 10*s.* in the pound, he is only entitled to such allowance as the assignees think fit, not exceeding 3 per cent. and 300*l.* The above allowances are dependent on the allowance of the certificate, and cannot be claimed previously, and they cannot be paid till the requisite amount of dividend is paid. The bankrupt's right to it, however, is a vested interest even before the dividend, and passes to his representatives in the event of his death. One partner may receive an allowance if a sufficient dividend shall have been paid on his separate estate and on the joint estate, while another partner may not be entitled.

The effect of the certificate on a second bankruptcy is very materially curtailed; for if a bankrupt, after having once obtained a certificate, or having compounded with his creditors, or having been discharged under an Insolvent Act, again becomes bankrupt and obtains a certificate, unless his estate pays 15*s.* in the pound, such second certificate shall only protect his person from arrest; but his future estate and effects shall vest in the assignees under the second commission, who may seize the same.

If any surplus of the bankrupt's estate remains after the creditors are paid in full, it of course belongs to the bankrupt, and the assignees are bound, on his request, to declare to the bankrupt in what manner they have disposed of his real and personal estate, and to pay the surplus, if any, to him.

The statute 1 & 2 Wm. IV. c. 56, empowered the king, by letters patent under the Great Seal, to establish a court of judicature, to be called the Court of Bankruptcy, consisting of a 'chief judge,' being a sergeant or barrister-at-law of ten

years' standing, and three other judges, persons of the same description, and six barristers of seven years' standing, to be called commissioners of the court. The court was constituted a Court of Law and Equity, and, together with every judge and commissioner thereof, was to exercise all the rights and privileges of a Court of Record, as fully as the same are exercised by any of the courts or judges at Westminster. Before this court *fiats* in bankruptcy were to be prosecuted in London, and commissioners under the great seal were no longer to be appointed as formerly in each bankruptcy. The four judges of the court sat as a Court of Review. By 5 & 6 Wm. IV. c. 29, the number of the judges was reduced from four to three.

By 5 & 6 Vict. c. 122, several important alterations were made in the Court of Bankruptcy. The Court of Review is formed of one judge instead of three; and district courts of bankruptcy are established. Under 12 & 13 Vict. c. 106, the six commissioners and registrars are to be reduced to four, as vacancies occur.

The Court of Review has superintendence in all matters of bankruptcy, and jurisdiction to hear and determine all such matters of this description as were formerly brought by petition before the Lord Chancellor, and also all such other matters as are by the act, or the rules and regulations made in pursuance thereof, specially referred to this court. The proceedings before the court are by way of petition, motion, or special case, with an appeal to the Lord Chancellor in matters of law or equity; or, on the refusal or admission of evidence, such appeal to be heard by the Lord Chancellor only, and not by any other judge of the Court of Chancery. The court may direct issues as to questions of fact to be tried before any judge of the court, or before a judge of assize, and a jury to be summoned under the order of the court. The costs in the Court of Review are in the discretion of the court, and are to be taxed by one of the Masters of the Court of Chancery. All attorneys and solicitors of the courts at Westminster may be admitted and enrolled in the Court of Bankruptcy without fee, and may appear and plead

before the commissioners, but not before the Court of Review, in which court suitors appear by counsel. The judge of the court, with consent of the Lord Chancellor, may make rules and orders for regulating the practice and sittings of the court, and the conduct of the officers and practitioners. The court has an official seal with which all proceedings and documents in bankruptcy requiring the seal are sealed. An appeal lies from the commissioners to the Court of Review, and the decision of the Court of Review on the merits as to the proof of the debt is final, unless an appeal is lodged to the Lord Chancellor within one month. The Lord Chancellor or the Court of Review may direct an appeal case to be brought before the House of Lords under certain circumstances. The judges and commissioners have the power to take the whole, or any part of the evidence in any case before them, either *viva voce* on oath, or on affidavit.

Before the act 5 & 6 Vict. was passed, the plan of working bankruptcies in the country was as follows:—One hundred and forty separate lists of commissioners (each list consisting of two barristers and three attorneys) were appointed by the Lord Chancellor (on the nomination of the judges), to whom *fiats* were directed for the administration of the bankrupt law, in one hundred and thirty-two different cities and towns, in various parts of the country, exclusive of London. Country *fiats* are now addressed to one of the seven district courts of bankruptcy, which are established at Birmingham, Bristol, Exeter, Leeds, Liverpool, Manchester, and Newcastle. The affairs of a bankrupt at Norwich are administered in London; a bankruptcy in the southern part of Nottinghamshire is within the jurisdiction of the Birmingham court, and if the bankrupt has lived in the northern part of the county of Nottingham, it is worked at Leeds. Each court has thus jurisdiction in a district of from forty to upwards of eighty miles in length. The Privy Council is empowered to select the seat of the courts, and to fix and alter their jurisdiction. The act limits the number of commissioners for the district

courts to twelve, who must be sergeants or barristers of seven years' standing, each of whom is competent to exercise the jurisdiction of the court. Two commissioners, with from two to four official assignees, and two deputy registrars, are appointed to each district court. The Lord Chancellor may order any commissioner or deputy-registrar of the court in London, or other qualified person, to act for or in aid of any country commissioner or deputy-registrar, or *vice versa*; and in like manner the commissioner or deputy-registrar for one district may act in another. The district courts are auxiliary to each other for proof of debts and examination of witnesses. By act of 1849, the chief documents in bankruptcy must be on vellum, paper, or parchment, bearing a specified amount of duty in lieu of all fees. The principal fee is 10*l*.

The salaries of the judge, commissioners, and other officers of the Court of Bankruptcy, amounted, in the year ending 1st of January, 1844, to 49,382*l*.; and 12,326*l*. were paid besides as compensation to the old commissioners and other officers, of which amount 7352*l*. was paid to Thurlow, Patentee of Bankrupts, and 468*l*. to Thurlow, Rev. J., Clerk of Hanaper. The whole of this sum of 12,326*l*., with the exception of 2433*l*. paid to thirteen late commissioners of bankrupts, goes to persons who are entitled on the Parliamentary Return "Hanaper Officers," of whom the Patentee of Bankrupts receives the sum above stated. This office was and is a sinecure. The judge receives 2500*l*. per annum; London commissioners, 2000*l*. (1500*l*. before passing of 5 & 6 Vict.); commissioners of the country district courts, 1800*l*.; the accountant in bankruptcy (first appointed under 5 & 6 Wm. IV. c. 29), 1500*l*.; the Lord Chancellor's secretary of bankrupts, 1200*l*.; two chief registrars, 1000*l*. each; the deputy-registrars in London 800*l*., and the deputy-registrars of the district courts 600*l*., per annum each. The Lord Chancellor is empowered to order retiring annuities of 1500*l*. a-year to the judge, and of 1200*l*. to the commissioners; and also retiring annuities of different amounts to the accountant in bankruptcy, registrars, &c. These salaries are paid out of the fund

entitled the "secretary of bankrupts' account."

The amount of certain fees taken in the Court of Bankruptcy, London, for the year ending 11th of January, 1844, was 2892*l*.; and from 11th of Nov., 1842, to 11th of Jan., 1844, the fees taken in the seven district courts amounted to 1881*l*. After payments to ushers of the courts, clerks, and other charges, the sum of about 2000*l*. was divided amongst the registrars and deputy-registrars under § 89 of 5 & 6 Vict. c. 122.

The sum paid out as dividends to creditors by the accountant in bankruptcy for each of the following years ending 31st of December, was:—523,148*l*. in 1841; 661,230*l*. in 1842; 1,067,976*l*. in 1843. On the 1st of January, 1844, the Bankruptcy Fund account was 1,506,407*l*.

The following particulars, showing the amount of solicitors' and messengers' bills of costs up to the time of the choice of assignees in the first twenty commissions and fiats removed into the district courts, and of the first twenty registered in the said courts, are taken from a parliamentary paper (5, Sess. 1844):—

District Courts.	Solicitors' Bills.		Messengers' Bills.		Total.
	£.		£.		£.
Birmingham:					
Fiats transferred	56		10		66
New fiats	36		18		54
Manchester:					
Fiats transferred	81		..		..
New fiats	38		15		53
Liverpool:					
Fiats transferred	54		..		..
New fiats	28		12		40
Leeds:					
Fiats transferred	..		..		72
New fiats	..		..		70
Bristol:					
Fiats transferred	..		..		79
New fiats	..		..		41
Newcastle:					
Fiats transferred	..		..		85
New fiats	..		..		54
Exeter:					
Fiats transferred	..		..		98
New fiats	..		..		65

The average costs under twenty fiats removed into the Court of Bankruptcy in London were as follows:—solicitors' costs 76*l*.; messengers' 14*l*. And the costs

under twenty new flats registered in the same court, after the passing of 5 & 6 Vict. c. 122, against bankrupts residing above forty miles from London, to which distance the London circuit extended, were:—solicitors' costs 44*l.*; messengers' 10*l.* 19*s.*: the totals being respectively 80*l.* and 55*l.*

In the session of 1844 several petitions were presented to Parliament respecting the effect of the recent changes in the administration of the bankrupt law. The petitioners complained of the loss of time and expense occasioned by attending the district courts, the distance being sometimes eighty miles from the place where the bankrupt and the creditors lived. They also alleged that the official assignees of the district court were disqualified by want of local knowledge from managing the bankrupt's estate and effects to the best advantage: and that as dividends can only be paid by application to the district court in person, or by means of an endorsed warrant through an agent, creditors are involved in an expense which was not incurred under the previous administration of the bankrupt law. The bankrupts themselves are also obliged to attend the district court, and to take frequent journeys thereto at the expense of the estate. The deputy-registrars of the Leeds District Court append a note to the return given above, in which they state that, "with a view to avoid the heavy charges of the petitioning creditor, solicitor, and others travelling a distance of from forty to seventy miles, and for their loss of time, the commissioners have determined to receive the proofs of the petitioning creditor's debt, &c., upon depositions made out of court, have called upon the solicitors to work the fiat through their agents at Leeds, and have directed the messengers, instead of themselves travelling to seize the effects of the bankrupts, to employ deputies in the nearest town." But most of these objections have been removed by the new act; and the prospective reduction in the number of Commissioners and Registrars, with other improvements, are likely to augment both the efficiency and the economy of the bankruptcy administration.

The number of bankruptcies gazetted in England and Wales in 1842 was 1273, and 1112 in 1843. Of this number 322 were in the metropolis, 116 in Lancashire, and 108 in the West-Riding of Yorkshire.

*Scotland.*—In Scotland the term bankruptcy is applied, not to the process by which an insolvent trader's available funds are collected and distributed among his creditors, but to the act of subjecting persons of any class to certain ordeals which publish to the world their inability to meet the demands against them. A person who is "notour bankrupt" in Scotland, bears a generic analogy to a person who has committed an act of bankruptcy in England, with this leading difference, that it is not a necessary characteristic of the former that he must come within the class of persons whose estates may be distributed by the process of commercial bankruptcy. In Scotland, as in England, the bankrupt, if he be within the class, is liable to the distributing process, which is there called "sequestration." It is necessary to keep in view that a "bankrupt" and a "sequestrated bankrupt" are distinct terms. Every person sequestrated is necessarily a bankrupt, but every person who is a bankrupt is not a person whose estate may be sequestrated.

The criterions by which a person may become a bankrupt have been fixed by certain statutes, the earliest of which now in force is of the year 1691. Various legislative measures were passed for preventing fraudulent alienations by insolvent persons to the prejudice of creditors, and a system for the relief of insolvent debtors who are not mercantile persons was long a branch of the common law as derived from the civilians, and has lately been remodelled by statute. [CESSIO BONORUM.] It was not, however, until the year 1772 that the legislature established a process which, like the bankruptcy system in England, should collect the available assets of a bankrupt merchant into one fund, distribute it through the hands of third parties, and, under judicial supervisance among the creditors according to the proportion of the fund to their respective claims, and in the end dis-



charge the bankrupt from his liabilities. Since the year 1772 there has been a succession of sequestration acts, of which the latest was passed on the 17th of August, 1839 (2 & 3 Vict. c. 42). Its main features of distinction from the immediately previous act (54 Geo. III. c. 137) are these: It enlarges the class of persons who may be subjected to the process: instead of being a process of which every step must be taken in the supreme court, the sequestration, being awarded there, is remitted to the sheriff's local court, where the routine business proceeds under the sanction of the sheriff, who has an authority bearing a general resemblance to that of the commissioner in England. The winding up of the proceedings and the taking the process out of court require the sanction of the supreme judiciary. Sequestration reduces the interest which will qualify a creditor to sue for the application of the act, and abbreviates the proceedings.

*How a man becomes bankrupt.*—A person who is insolvent is made notour bankrupt, by being imprisoned either according to the old form of horning and caption, or in terms of the 1 & 2 Vict. c. 114, or by such writ of imprisonment having been issued against him, which he seeks to defeat by taking sanctuary within the precincts of the Palace of Holyroodhouse, fleeing, absconding, or forcibly defending his person. If the individual be not liable to imprisonment, from his residing in the sanctuary, being abroad, having privilege of parliament, &c., the execution against him of the charge which precedes the warrant of imprisonment, if accompanied by an arrestment of his goods not loosed within fifteen days, or by a pointing of his moveable goods, or by an adjudication of his real property, will make him bankrupt. A person whose estate is sequestrated, if not previously bankrupt, becomes so from the date of the first judicial deliverance in the sequestration. The principal effect of bankruptcy, is to strike at alienations to creditors within sixty days before it, and to equalize attachments against the estate taken within sixty days before and four months after it.

*Who may be sequestrated.*—The classes

of persons coming within the 2 & 3 Vict. c. 41, are enumerated as any debtor "who is or has been a merchant, trader, manufacturer, banker, broker, warehouseman, wharfinger, underwriter, artificer, packer, builder, carpenter, shipwright, innkeeper, hotel-keeper, stable-keeper, coach-contractor, cattle-dealer, grain-dealer, coal-dealer, fish-dealer, lime-burner, printer, dyer, bleacher, fuller, calenderer, and generally any debtor who seeks or has sought his living or a material part thereof, for himself, or in partnership with another, or as agent or factor for others, by using the trade of merchandise, by way of bargains, exchange, barter, commission, or consignment, or by buying and selling, or by buying and letting for hire, or by the workmanship or manufacture of goods or commodities:" (§ 5) unless the debtor consent to the sequestration, he must have been bankrupt, or must have been sixty days in sanctuary within the space of a year, and must have transacted business in Scotland, and must within the preceding year have resided or had a dwelling house in Scotland. The estates of a deceased debtor may under certain restrictions be sequestrated though he was not bankrupt and did not come within the above classification.

*Application and awarding.*—The application for sequestration is by petition to the court of session. It may be either by the debtor with concurrence of creditors, or by the latter. The persons who may petition or concur are—any one creditor to the extent of 50*l.*; any two to the extent of 70*l.*; and any three or more to the extent of 100*l.* Where the petition is with the debtor's consent, sequestration is immediately awarded. Where it is required solely at the instance of the creditors, measures are taken for citing those concerned, and for procuring evidence of the statements on which the petition proceeds. When sequestration is awarded, the deliverance remits the process to the sheriff of the county, and appoints the times and place of certain meetings for arranging the management of the estate. In all questions under the act, the sequestration is held to commence with the date of the first judicial deliverance to whatever effect, on the application;

and the effect of the process in attaching the funds and neutralising the operations of individual creditors operates by relation from that date. The judgment awarding sequestration is not subject to review, but it may be recalled at the instance of the debtor, and on his showing that it should not have been awarded; and the court may on equitable principles, and for the better management of the estate, recall the sequestration, if nine-tenths of the creditors apply for a recall.

*Management.*—At their first meeting the creditors either choose an “Interim Factor,” or devolve his duties on the sheriff clerk of the county. His functions are confined to the custody and preservation of the estate. He takes possession of the books, documents, and effects, and lodges the money in bank. He has no administrative control, and cannot convert the estate into money, or otherwise attempt to increase its value. The person on whom the estate is finally devolved, the trustee, is elected by a majority in value of the qualified creditors present at a meeting judicially appointed to take place not less than four and not more than six weeks after the date of the awarding of the sequestration. The trustee stands in place of the chosen assignee in England. In Scotland there is no person whose office corresponds with that of the official assignee, but a committee of three creditors, called commissioners, is appointed at the same meeting and in the same manner as the trustee, whose duty it is to superintend the proceedings of the trustee, audit his accounts, fix his remuneration, decide on the payment of dividends, &c. Relations of the bankrupt, and persons interested in the estate otherwise than as simple creditors, are disqualified as trustees and commissioners. The trustee has the duty of managing and recovering the estate, and converting it into money. He is the legal representative of the body of creditors, and in his person are vested all rights of action and others in relation to the estate of which the debtor is divested by the bankruptcy. He is bound to lodge money as it is received, in bank, under certain statutory regulations fortified by penalties. The trustee is amenable to the

court of session and to the sheriff for his conduct. He may be removed by a majority in number and value of the creditors, and one-fourth of the creditors in value may apply for his judicial removal, showing cause. The trustee's title to act commences at the time when his election is judicially confirmed. In the case of a disputed election, the question may be carried from the court of the sheriff, who has in the first place the judicial sanction of the election to the court of session. The judicial proceedings vesting the estate are entered in the registers of real property in Scotland, and at his confirmation all the real and personal property of the bankrupt within the British empire vests in the trustee, and is considered as having vested in him from the date of the sequestration. A copy of the act and warrant of the trustee's confirmation, certified by the clerk of the bill chamber in the court of session, is declared by the statute to be sufficient evidence of the trustee's title, to enable him to sue in any court in the British dominions.

The bankrupt will obtain a warrant of liberation if he have been imprisoned, or otherwise of protection from imprisonment, at the commencement of the process, if there be no valid objection to it. The court of session's warrant is effectual to protect him from imprisonment in all parts of the British dominions. Four-fifths in value of the creditors may award him an allowance until the payment of the second dividend. It is not in any way measured by the amount of the dividend, but is restricted in all cases to a sum within 3*l.* 3*s.* per week. There are provisions for the examination of the bankrupt, his family, servants, &c., and in general for enforcing a discovery of the estate, bearing a general resemblance to the provisions for the like purposes in England. The bankrupt's release from the debts which may be ranked or proved on his estate is accomplished by a judicial discharge. If all the creditors who have qualified concur, he may petition for it immediately after the creditors have held the statutory meeting which follows his examination. Eight months after the date of the sequestration he may petition for it if a majority in number and four-fifths in value

concur. He makes an affidavit that he has made a fair surrender, and after certain formalities tending to publicity, and the elicitation of reasons of objection, he receives his discharge. It is granted either by the sheriff or the lord ordinary of the court of session, and in the former case it is confirmed by the lord ordinary, and registered in the bill chamber of the court of session.

*Ranking and Dividends.*—What is called in England the proof of debts, is called in Scotland "Ranking." The trustee is the judge of each claim in the first instance, his decision being subject to judicial review. Creditors produce with their claims, affidavits and vouchers. The peculiar character of the law of real property, and the securities and other rights to which it gives rise, operate some distinctions between the ranking in a sequestration in Scotland and proof in England. The most important particular, however, in which the Scottish system differs from the English, is in the absence in the former of the distinction between partnership and individual estates which characterises the latter, the creditors of a company in Scotland being entitled to rank in the bankrupt estates of the individual partners, the claim on the company estate being in each case first valued and deducted. The provisions of 6 Geo. IV. c. 16, in England, regarding contingent and annuity creditors, have been incorporated in the Scottish sequestration act, but it was an old established practice in Scotland for the claims of such creditors to be equitably adjusted. A creditor, to share in a dividend, must lodge his claim at least two months before the time when it is payable. The first dividend is payable on the first lawful day after the expiry of eight months from the date of the sequestration, and the others successively at intervals of four months.

The trustee and commissioners may with the sanction of the creditors summarily dispose of whatever portion of the estate may be in existence twelve months after the date of the sequestration. The unclaimed dividends are lodged in bank, at the direction of the bill chamber clerk, who preserves entries of them in a book called the "*Register of Unclaimed*

*Dividends.*" When the trustee has fulfilled his functions under the act, he calls a meeting of the creditors, that they may record their opinion of his conduct, and on their judgment he may apply to the court for a discharge, parties being heard for their interest: on his being judicially discharged, the sequestration is at an end. The sequestration act contains provisions for suspending the judicial realization and distribution of the estate by a composition contract. These provisions are nearly in the same terms with those for the same purpose in the English statute, which were originally adopted from the Scottish sequestration system. (*On the Law of Bankruptcy, Insolvency, and Mercantile Sequestration in Scotland*, by J. H. Burton, Esq., Advocate.)

*Ireland.*—The Irish law of bankruptcy has been gradually assimilated to the English law by several recent acts (6 & 7 Wm. IV. c. 14; amended by 1 Vict. c. 48, and 2 & 3 Vict. c. 86). There is no separate court of bankruptcy; but there are two commissioners who are empowered to act by a commission under the great seal. There are no official assignees.

*United States of North America.*—In 1841 an act was passed by Congress to establish a uniform system of bankruptcy throughout the United States of North America. The act came into operation early in 1842. The courts invested with jurisdiction, in the first instance, in bankruptcy cases, are the District Courts of the United States; and they are empowered to prescribe rules and regulations and forms of proceedings in all matters of bankruptcy, subject to the revision of the Circuit Court of the district. The district courts decide if the persons who apply to them, whether debtors or creditors, are entitled to the provisions of the bankrupt law; appoint commissioners to receive proofs of debt, and assignees of the estate; and make orders respecting the sale of the bankrupt's property. If the debtor himself commences proceedings, he gives in a list of his creditors and an account of his property, and twenty days' notice at least must be given of the day when the petition will be heard, when any

person can be heard against it. If the bankruptcy is decreed, the bankrupt's property is vested in an assignee. The bankrupt is allowed to retain his necessary household and kitchen furniture, and such other articles as the assignee shall think proper, with reference to the family, condition, and circumstances of the bankrupt, but the whole is not to exceed 300 dollars in value: the wearing-apparel of the bankrupt, his wife, and children, may also be retained by him in addition. An appeal lies to the court from the decision of the assignee in this matter. The bankrupt next petitions for a full discharge from all his debts, and a certificate thereof, and after seventy days' public notice, and personal service or notice by letter to each creditor, the petition comes on for hearing. The grounds for refusing the bankrupt his discharge and certificate are the same generally as those which disentitle a bankrupt in this country to the favourable consideration of the court—concealment of property, fraudulent preference of creditors, falsification of books, &c. In cases of voluntary bankruptcy a preference given to one creditor over another disentitles the bankrupt to his discharge, unless the same be assented to by a majority of those who have not been preferred. If at the hearing a majority of the creditors in number and value file their written dissent to the allowance of the bankrupt's certificate and discharge, he may demand a trial by jury, or may appeal to the next circuit court; and upon a full hearing of the parties, and proof that the bankrupt has conformed to the bankrupt laws, the court is bound to decree him his discharge and grant him a certificate. The discharge and certificate are equivalent to the certificate granted to bankrupts in England. In case of a second bankruptcy the bankrupt is not entitled to his discharge unless 75 per cent. has been paid on the debt of each creditor which shall have been allowed. Persons who work for wages are only entitled to wages to the extent of twenty-five dollars each out of a bankrupt's estate for labour done within six months next before the bankruptcy.

*France.*—In June, 1838, the French

law of 1807 on bankruptcy and insolvency was abrogated, and an entirely new law was promulgated, which now forms Book III. of the Code de Commerce (Des Faillites et Banqueroutes). In France, the Tribunal of Commerce acts as a court of bankruptcy, and its judgment declares the insolvency (faillite). The same judgment names the "juge-commissaire," who is a member of the Tribunal, and discharges duties analogous to those formerly performed in England by the old commissioners of bankruptcy: he fixes the sum to be allowed to the trader for support, conducts the examination into the affairs of the estate, directs the sale of property, &c. In some cases an appeal lies from his decisions to the Tribunal of Commerce. The "syndics" act as assignees, but are not selected from the body of creditors, and they are remunerated for their services at the discretion of the Tribunal. As the expense of prosecuting fraudulent bankrupts, when successful, is defrayed by the state, minutes, &c. of each case are made whenever required, for the use of the public department which has cognizance of prosecutions in bankruptcy; and the report which the syndics make to the "juge-commissaire" on the state of the trader's affairs is always transmitted with observations to the "procureur du roi."

A trader may be declared insolvent at the instance of one or more of his creditors; but if he ceases to fulfil his engagements he is required to make a declaration of insolvency before the Tribunal of Commerce, accompanied by a statement of his affairs. The Tribunal next appoints a "juge-commissaire" for this particular case, and also provisional syndics. A "juge de paix" is then required to place his seal on the effects, and the trader himself is taken to a debtors' prison, or placed in custody of an officer; though, when a voluntary declaration of insolvency has been made, he is not deprived of his liberty.

The last meeting of creditors is held for the purpose of hearing a report by the syndics of their proceedings, and of deliberating on the concordat, which is in most respects equivalent to a certificate in the English bankruptcy law, and must

be signed at this meeting, at which the trader must be present. The syndics oppose or favour the concordat as the case may be. The concordat requires the consent of a majority of the creditors who also represent three-fourths of the whole debts that are proved. There can be no concordat in the case of fraudulent bankruptcy. The concordat is incomplete until it has received the sanction of the Tribunal of Commerce, acting upon the report of the juge-commissaire. This completion of the process is called the "homologation;" and, after giving a statement to the trader, showing the result of their labours, in presence of the juge-commissaire, the functions of the syndics cease. The trader may be prosecuted for fraudulent bankruptcy after the homologation.

The term "Banqueroute" is applied in the French code to insolvency which is clearly traceable to imprudence or extravagance, and the bankrupt is liable to prosecution. The Code de Commerce declares that any trader against whom the following circumstances are proved is guilty of Simple bankruptcy:—If his personal or household expenses have been excessive; if large sums have been lost in gambling, stock-jobbing, or mercantile speculations; if, in order to avoid bankruptcy, goods have been purchased with a view of selling them below the market price; or if money has been borrowed at excessive interest; or if, after being insolvent, some of the creditors have been favoured at the expense of the rest. In the following cases also the trader is declared a Simple bankrupt:—1. If he has contracted, without value received, greater obligations on account of another person than his means or prospects rendered prudent. 2. A bankruptcy for a second time, without having satisfied the obligations of a preceding concordat. 3. If the trader has failed to make a voluntary declaration of insolvency within three days of the cessation of his payments, or if the declaration of insolvency contained fraudulent statements. 4. If he failed to appear at the meeting of the syndics. 5. If he has kept bad books, although without fraudulent intent.

It is fraudulent bankruptcy when an

insolvent has secreted his books, concealed his property, made over or misrepresented the amount of his capital, or made himself debtor for sums which he did not owe. A fraudulent bankrupt who flees to England may be surrendered under the CONVENTION TREATY.

It has been decided by the French tribunals that a certificate obtained in England by an English trader who flees to France does not free him from the demands of a French creditor who has not been a party to it.

BANNERET, an English name of dignity, now nearly if not entirely extinct. It denoted a degree which was above that expressed by the word *miles* or *knight*, and below that expressed by the word *baro* or *baron*. Milles, speaking of English dignities, says that the banneret was the last among the greatest and the first of the second rank. Many writs of the early kings of England run to the earls, barons, bannerets, and knights. When the order of baronet was instituted, an order with which we must be careful not to confound the banneret, precedence was given to the baronet above all bannerets, except those who were made in the field, under the banner, the king being present.

This clause in the baronet's patent brings before us one mode in which the banneret was created. He was a knight so created in the field, and it is believed that this honour was conferred usually as a reward for some particular service. Thus, in the fifteenth of King Edward III., John de Copeland was made a banneret for his service in taking David Bruce, king of Scotland, at the battle of Durham. John Chandos, a name which continually occurs in the history of the wars of the Black Prince, and who performed many signal acts of valour, was created a banneret by the Black Prince and Don Pedro of Castile. It is in the reign of Edward III. that we hear most of the dignity of banneret. Reginald de Cobham and William de la Pole were by him created bannerets. In this last instance the creation was not in the field, nor for military services, for De la Pole was a merchant of Hull, and his services consisted in supplying the king with money.

for his continental expeditions. We have therefore here an instance of a second mode by which a banneret might be created, that is, by patent-grant from the king. Milles mentions a third mode, which prevails also on the Continent. When the king intended to create a banneret, the person about to receive the dignity presented the sovereign with a swallow-tailed banner rolled round the staff; the king unrolled it, and, cutting off the ends, delivered it a *bannière quar-ree* to the new banneret, who was thenceforth entitled to use the banner of higher dignity. Sometimes the grant of the dignity was followed by the grant of means by which to support it. This was the case with some of those above mentioned. De la Pole received a munificent gift, the manor of Burstwick in Holderness, and 500 marks annual fee, issuing out of the port of Hull. (Dugdale's *Baronage*, vol. ii. p. 183.)

The rank of the banneret is well understood, but what particular privilege he enjoyed above other knights is not now known. It was a personal honour; and yet in De la Pole's patent it is expressed that the grant was made to him to enable him and his heirs the better to support his dignity. But the patent was perhaps irregular, as it seems to have been surrendered. No catalogue has been formed of persons admitted into this order, and it is presumed that they were few. The institution of the order of baronets probably contributed greatly to the abolition of the banneret. The knights of the Order of the Bath in modern times approach nearest to the bannerets of former days. In the civil wars, Captain John Smith, who rescued the king's standard at the battle of Edgehill, is said to have been created a banneret. When King George III. intended to proceed to the Nore, in 1797, to visit Lord Duncan's fleet, it was rumoured that he designed to create several of the officers bannerets. The weather was unfavourable and the king returned without reaching the fleet; but the dignity which he conferred on Captain (afterwards Sir Henry) Trollope, in whose vessel he sailed, was understood to be that of a knight banneret.

The French antiquaries since Pasquier

have represented the banneret as having been so called as being a knight entitled to bear a banner in the field; or, in other words, a knight whose quota of men to be furnished to the king's army for the lands he held of him were of that number (it is uncertain what) which constituted of itself a body of men sufficient to have their own leader. In England it is believed there were few tenants bringing any considerable number of men who were not of the rank of the *barones*.

#### BANNS OF MARRIAGE. [MARRIAGE.]

BAR (in French, *Barreau*) is a term applied, in a court of justice, to an enclosure made by a strong partition of timber, three or four feet high, with the view of preventing the persons engaged in the business of the court from being incommoded by the crowd. It has been supposed to be from the circumstance of the counsel standing there to plead in the causes before the court, that those lawyers who have been called to the bar, or admitted to plead, are termed *barristers*, and that the body collectively is denominated *the bar*, but these terms are more probably to be traced to the arrangements in the Inns of Court. [BARRISTER; INNS OF COURT.] Prisoners are also placed for trial at the same place; and hence the practice arose of addressing them as the "prisoners at the bar." The term bar is similarly applied in the houses of parliament to the breast-high partition which divides from the body of the respective houses a space near the door, beyond which none but the members and clerks are admitted. To these bars witnesses and persons who have been ordered into custody for breaches of privilege are brought; and counsel stand there when admitted to plead before the respective houses. The Commons go to the bar of the House of Lords to hear the king's speech at the opening and close of a session.

A trial at bar is one which takes place before all the judges at the bar of the court in which the action is brought.

BARBARIAN. The Greek term *βάρβαρος* (*barbaros*) appears originally to have been applied to language, signifying a mode of speech which was unintelli-

gible to the Greeks; and it was perhaps an imitative word intended to represent a confused and indistinct sound. (*Iliad*, ii. 867; and Strabo, cited and illustrated in the *Philological Museum*, vol. i. p. 611.) *Barbaros*, it will be observed, is formed by a repetition of the same syllable, *bar-bar-os*. Afterwards, however, when all the races and states of Greek origin obtained a common name, it obtained a general negative sense, and expressed all persons who were not Greeks. (Thucydides, i. 3.) At the same time as the Greeks made much greater advances in civilization, and were much superior in natural capacity to their neighbours, the word barbarus obtained an accessory sense of inferiority both in cultivation and in native faculty, and thus implied something more than the term ξένος, or foreigner. At first the Romans were included among the barbarians; then *barbari* signified all who were not Romans or Greeks. In the middle ages, after the fall of the Western empire, it was applied to the Teutonic races who overran the countries of western Europe, who did not consider it as a term of reproach, since they adopted it themselves, and used it in their own codes of law as an appellation of the Germans as opposed to the Romans. At a later period it was applied to the Moors, and thus an extensive tract on the north of Africa obtained the name of Barbary.

*Barbarian*, in modern languages, means a person in a low state of civilization, without any reference to the place of his birth, so that the native of any country might be said to be in a state of barbarism. The word has thus entirely lost its primitive and proper meaning of *non-Grecian*, or *non-Roman*, and is used exclusively in that which was once its accessory and subordinate sense of rude and uncivilized.

**BARBER-SURGEONS.** In former times, both in this and other countries, the art of surgery and the art of shaving went hand in hand. As to the barbiers-chirurgiens in France, see the *Diction. des Origines*, tom. i. p. 189. They were separated from the barbiers-perruquiers in the time of Louis XIV., and made a distinct corporation.

The barbers of London were first incorporated by King Edward IV. in 1461, and at that time were the only persons who exercised surgery; but afterwards others, assuming the practice of that art, formed themselves into a voluntary association, which they called the Company of Surgeons of London. These two companies were, by an act of parliament passed in the 32 Henry VIII. c. 41, united and made one body corporate, by the name of the Barbers and Surgeons of London. This act however at once united and separated the two crafts. The barbers were not to practise surgery further than drawing of teeth; and the surgeons were strictly prohibited from exercising "the feat or craft of barberie or shaving." The surgeons were allowed yearly to take, at their discretion, the bodies of four persons after execution for felony, "for their further and better knowledge, instruction, insight, learning, and experience in the said science or faculty of surgery;" and they were moreover ordered to have "an open sign on the street-side where they should fortune to dwell, that all the king's liege people there passing might know at all times whither to resort for remedies in time of their necessity." Four governors or masters, two of them surgeons, the other two barbers, were to be elected from the body, who were to see that the respective members of the two crafts exercised their callings in the city agreeably to the spirit of the act.

The privileges of this Company were confirmed in various subsequent charters, the last bearing date the 15th of April, 5th Charles I.

By the year 1745 it was discovered that the two arts which the Company professed were foreign to and independent of each other. The barbers and the surgeons were accordingly separated by act of parliament, 18th Geo. II., and made two distinct corporations.

(Pennant's *London*, p. 255; *Stat. of the Realm*, vol. i. p. 794; Edmondson's *Compl. Body of Heraldry*; Strype's edit. of Stow's *Survey of London*, b. v. ch. 12.)

**BARKERS.** [Auction.]

**BARON, BARONY.** Sir Henry Spelman (*Glossarium*, 1626, voce *Baro*) regards the word Baron as a corruption of

the Latin *vir*: but it is a distinct Latin word, used by Cicero, for instance, and the supposition of corruption is therefore unnecessary. The Spanish word *varon*, and the Portuguese *barão*, are slightly varied forms. The radical parts of *vir* and *baro* are probably the same, *b* and *v* being convertible letters, as we observe in the forms of various words. The word *barones* (also written *berones*) first occurs, as far as we know, in the book entitled *De Bello Alexandrino* (cap. 53), where barones are mentioned among the guards of Cassius Longinus in Spain; and the word may possibly be of native Spanish or Gallic origin. The Roman writers, Cicero and Persius, use the word *baro* in a disparaging sense; but this may not have been the primary signification of the word, which might simply mean *man*.

But the word had acquired a restricted sense before its introduction into England, and probably it would not be easy to find any use of it in English affairs in which it denoted the whole male population, but rather some particular class, and that an eminent class.

Of these by far the most important is the class of persons who held lands of a superior by military and other honourable services, and who were bound to attendance in the courts of that superior to do homage, and to assist in the various business transacted there. The proper designation of these persons was the Barons. A few instances selected from many will be sufficient to prove this point. Spelman quotes from the *Book of Ramsey* a writ of King Henry I., in which he speaks of the Barons of the honour of Ramsey. In the earliest of the Pipe Rolls in the Exchequer, which has been shown by its late editor to belong to the thirty-first year of King Henry I., there is mention of the barons of Blithe, meaning the great tenants of the lord of that honour, now call the honour of Tickhill. Selden (*Titles of Honour*, 4to. edit. p. 275) quotes a charter of William, Earl of Gloucester, in the time of Henry II., which is addressed "Dapifero suo et omnibus baronibus suis et hominibus Francis et Anglis," meaning the persons who held lands of him. The court itself in which these tenants had to perform their ser-

vices is called to this day the Court Baron, more correctly the court of the Barons, the Curia Baronum.

What these barons were to the earls, and other eminent persons whose lands they held, that the earls and those eminent persons were to the king: that is, as the earls and bishops, and other great landowners, to use a modern expression, had beneath them a number of persons holding portions of their lands for certain services to be rendered in the field or in the court, so the lands which those earls and great people possessed were held by them of the king, to whom they had in return certain services to perform of precisely the same kind with those which they exacted from their tenants; and as those tenants were barons to them, so were they barons to the king. But, inasmuch as these persons were, both in property and in dignity, superior to the persons who were only barons to them, the term became almost exclusively, in common language, applied to them; and when we read of the barons in the early history of the Norman kings of England, we are to understand the persons who held lands immediately of the king, and had certain services to perform in return.

Few things are of more importance to those who would understand the early history and institutions of England, than to obtain a clear idea of what is meant by the word baron, as it appears in the writers on the affairs of the first two centuries and a half after the Conquest. They were the tenants in chief of the crown. But to make this more intelligible, we may observe that, after the Conquest, there was an actual or a fictitious assumption of absolute property in the whole territory of England by the king. The few exceptions in peculiar circumstances need not here be noticed. The king, thus in possession, granted out the greatest portion of the soil within a few years after the death of Harold and his own establishment on the throne. The persons to whom he made these grants were, 1. The great ecclesiastics, the prelates, and the members of the monastic institutions, whom probably, in most instances, he only allowed to retain, under a different species of tenure, what had been settled



upon them by Saxon piety. 2. A few Saxons, or native Englishmen, who in a few rare instances were allowed to possess lands under the new Norman master. 3. Foreigners, chiefly Normans, persons who had accompanied the king in his expedition and assisted him in obtaining the throne: these were by far the most numerous class of the Conqueror's beneficiaries. Before the fourteenth or fifteenth year of his reign the distribution of the lands of England had been carried nearly to the full extent to which it was designed to carry it; for the king meant to retain in his own hands considerable tracts of land, either to form chaces or parks for field-sports, to yield to him a certain annual revenue in money, to be as farms for the provision of his own household, or to be a reserve fund, out of which hereafter to reward services which might be rendered to him. These lands formed the demesne of the crown, and are what are now meant when we speak of the ancient demesne of the crown.

When this was done a survey was taken of the whole: first, of the demesne lands of the king; and next, of the lands which had been granted out to the ecclesiastical corporations, or to the private persons who had received portions of land by the gift of the king. At the same time, the commissioners, to whom the making of this survey was entrusted, were instructed to inquire into the privileges of cities and boroughs, a subject with which we have not at present any concern. The result of this survey was entered of record in the book which has since obtained the name of *Domesday Book*, the most august as well as the most ancient record of the realm, and for the early date, the extent, variety, and importance of the information which it contains, unrivalled, it is believed, by any record of any other nation. We see there who the people were to whom the king had granted out his lands, and at the same time what lands each of those people held. It presents us with a view, which is nearly complete, of the persons who in the first twenty years after the Conquest formed the barons of England, and of the lands which they held: the progenitors of the persons who, in subsequent

times, were the active and stirring agents in wresting from King John the great charter of liberties, and who asserted rights or claims which had the effect of confining the kingly authority of England within narrower limits than those which circumscribed the regal power in most of the other states of Europe.

The indexes which have been prepared to 'Domesday-Book' present us with the names of about 400 persons who held lands immediately of the king. Some of these were exceedingly small tenures, and merged at an early period in greater, or, through forfeitures or other circumstances, were resumed by the crown. On the other hand, 'Domesday-Book' does not present us with a complete account of the whole tenancies in chief, because—1. The four northern counties are, for some reason not at present understood, omitted in the survey; and 2. There was a creation of new tenancies going on after the date of the survey, by the grants of the Conqueror or his sons of portions of the reserved demesne. The frequent rebellions, and the unsettled state in which the public affairs of England were in the first century after the Conquest, occasioned many resumptions and great fluctuations, so that it is not possible to fix upon any particular period, and to say what was precisely the number of tenancies in chief held by private persons; but the number, before they were broken up when they had to be divided among co-heiresses, may be taken, perhaps, on a rude computation, at about 350. In this the ecclesiastical persons who held lands in chief are not included.

When we speak of the king having given or granted these lands to the persons who held them, we are not to understand it as an absolute gift for which nothing was expected in return. In proportion to the extent and value of the lands given, services were to be rendered, or money paid, not in the form of an annual rent, but as casual payments which the king had a right, under certain circumstances, to demand. The services were of two kinds: first, military service, that is, every one of those tenants (tenants from *teneo*, to hold) was bound to give personal service to the king in his wars,

and to bring with him to the royal army a certain quota of men, corresponding in number to the extent and value of his lands; and, secondly, civil services, which were of various kinds, sometimes to perform certain offices in the king's household, to execute certain duties on the day of his coronation, to keep a certain number of horses, hounds, or hawks for the king's use, and the like. But, besides these honourable services, they were bound to personal attendance in the king's court when the king should please to summon them, and to do homage to him (homage from *homo*), to acknowledge themselves to be his *homines*, or *barones*, and to assist in the administration of justice, and in the transaction of other business which was done in the court of the king.

We see in this the rude beginnings of the modern parliaments, assemblies in which the barons are so important a constituent. But before we enter on that part of the subject, it is proper to observe, that among the great tenants of the crown there was much diversity both of rank and property. We shall pass over the bishops and other ecclesiastics, only observing, that when it is said that the bishops have seats in parliament in virtue of the baronies annexed to their sees, the meaning of the expression is, that they sit there as any other lay homagers or barons of the king, as being among the persons who held lands of the crown by the services above mentioned; which is correct as far as parliament is regarded as a court for the administration of justice, but doubtful so far as it is an assembly of wise men to advise the king in matters touching the affairs of the realm. Amongst the other tenants we find some to whose names the word *vicecomes* is annexed. On this little has been said by the writers on English dignities, and it is doubtful whether it is used in 'Domesday' as an hereditary title, or only as a title of office answering to the present sheriff. But we find some who have indisputably a title, in the proper sense of the word, annexed to their names, and which we know to have descended to their posterity. These are the *comites* of 'Domesday-Book,' where, by the Latin word *comes*, they have represented the

earl of the Saxon times; and as these persons were raised above the other tenants in dignity, so were they, for the most part, distinguished by the greater extent of the lands held by them. Among those to whose names no mark of distinction is annexed, there was also great diversity in respect of the extent of territory granted to them. Some had lands far exceeding the extent of entire counties, while others had but a single parish or township, or, in the language introduced at the Conquest, but a single manor, or two adjacent manors, granted to them.

All these persons, the earl included, were the barons, or formed the baronage of England. Whether the tenancy were large or small, they were all equally bound to render their service in his court when the king called upon them. The diversity of the extent of the tenure affords a plausible discriminatory circumstance between two classes of persons who appear in early documents—the greater and the lesser barons; but a better explanation of this distinction may be given. In the larger tenancies, the persons who held them granted out portions to be held of them by other parties upon the same terms on which they held of the king. As they had to furnish a quota of men when the king called upon them, so they required their tenants to furnish men equipped for military service proportionate to the extent of lands which they held when the king called upon them. As they had to perform civil services of various kinds for the king, so they appointed certain services of the same kind to be performed by their tenants to themselves. As they had to do homage from time to time to the king, and to attend in his court for the administration of justice and for other business touching the common interest, so they required the presence of their tenants to acknowledge their subjection and to assist in the administration of that portion of public justice which the sovereign power allowed the great tenants to administer. The castles, the ruins of which exist in so many parts of the country, were the seats of these great tenants, where they held their courts, received the homage, and administered justice, and were to the sur-

rounding homagers what Westminster Hall, a part of the court of the early kings of England, was to the tenantry in chief. The Earl of Chester is said to have thus subinfeudated only eight persons in the vast extent of territory which the Conqueror granted to him. These had, accordingly, each very large tracts, and they formed, with four superiors of religious houses, the court, or, as it is sometimes called, the parliament of the Earls of Chester. These persons are frequently called the barons of that earldom; but the number of persons thus subinfeudated was usually greater, and the tenancies consequently smaller. They were, for the most part, persons of Norman origin, the personal attendants, it may be presumed, of the great tenant. There is no authentic register of them, as there is of the tenants in chief; but the names of many of them may be collected from the charters of their chief lords, to which they were, in most instances, the witnesses. These, it is presumed, constitute the class of persons who are meant by the Lesser Barons, when that term is used by writers who aim at precision.

Many of these Lesser Barons, or Barons of the Barons, became the progenitors of families of pre-eminent rank and consequence in the country. For instance, the posterity of Nigellus, the Baron of Halton, one of the eight of the county of Chester, through the unexpected extinction of the male posterity of Ilbert de Laci, one of the greatest of the tenants in chief beneath the dignity of an earl, and whose castle of Pontefract, though in ruins, still shows the rank and importance of its early owners, became possessed of the great tenancy of the Laci, assumed that name as the hereditary distinction, married an heiress of the Earls of Lincoln, and so acquired that Earldom; and when at length they ended in a female heiress, she was married to Thomas, son of Edmond, Earl of Lancaster, son of King Henry III. The ranks, indeed, of the tenants in chief, or greater barons, were replenished from the class of the lesser barons: as in the course of nature cases arose in which there was only female issue to inherit. But even their own tenancies were sometimes so extensive,

that they were enabled to exhibit a miniature representation of the state and court of their chief: they affected to subinfeudate; to have their tenants doing suit and service; and in point of fact, many of the smaller manors at the present day are but tenures under the lesser barons, who held of the greater barons, who held of the king. The process of subinfeudation was checked by a wise statute of King Edward I., who introduced many salutary reforms, passed in the eighteenth year of his reign, commonly called the statute *Quia Emptores, &c.*, which directed that all persons thus taking lands should hold them not of the person who granted them, but of the superior of whom the granter himself held.

The precise amount and precise nature of the services which the king had a right to require from his barons in his court, is a point on which there seems not to be very accurate notions in some of the writers who have treated on this subject; and a similar want of precision is discernible in the attempt at explaining how to the great court baron of the king were attracted the functions which belonged to the deliberative assembly of the Saxon kings, and the *Commune Concilium* of the realm, the existence of which is recognised in charters of some of the earliest Norman sovereigns. The fact, however, seems to be admitted by all who have attended to this subject, that the same persons who were bound to suit and service in the king's court constituted those assemblies which are called by the name of parliaments, so frequently mentioned by all our early chroniclers, in which there were deliberations on affairs touching the common interest, and where the power was vested of imposing levies of money to be applied to the public service. It is a subject of great regret to all who wish to see through what processes and changes the great institutions of the country have become what we now see them, that the number of public records which have descended to us from the first hundred and fifty years after the Conquest is so exceedingly small, and that those which remain afford so little information respecting this most interesting point of inquiry.

There is, however, no reasonable doubt that the parliament of the early Norman kings did consist originally of the persons who were bound to service in the king's court by the tenure of their lands. But when we come to the reign of King Edward I., and obtain some precise information respecting the individuals who sat in parliament, we do not find that they were the whole body of the then existing tenantry in chief, but rather a selection from that body, and that there were among those who came by the king's summons, and not by the election and deputation of the people, some who did not hold tenancies in chief at all. To account for this, it has been the generally received opinion, that the increase of the number of the tenants in chief (for when a fee fell among co-heiresses it increased the number of such tenants) rendered it inconvenient to admit the whole, and especially those whose tenancies were sometimes only the fraction of the fraction of the fee originally granted; and that the barons and the king, through a sense of mutual convenience, agreed to dispense with the attendance of some of the smaller tenants. Others have referred the change to the latter years of the reign of King Henry III.; when the king, having broken the strength of the barons at the battle of Evesham, established a principle of selection, summoning only those among the barons whom he found most devoted to his interest. It is matter of just surprise that points of such importance as these in the constitutional history of the country should be left to conjecture; and especially, as from time to time claims are presented to parliament by persons who assert a right to sit there as being barons by tenure, that is, persons who hold lands immediately of the king, and whose ancestors, it is alleged, sat by virtue of such tenure. The committee of the House of Lords, which sat during several sessions of parliament to collect from chronicle, record, and journal everything which could be found touching the dignity of a peer of the realm, made a very voluminous and very instructive Report in 1819. This has been followed by reports on the same subject by other committees. They all

confess that great obscurity rests upon the original constitution of parliament, and suppose the probability that there may still be found among the unexamined records of the realm something which may clear away at least a portion of the obscurity which rests upon it. [LORDS, HOUSE OF, and PARLIAMENT.]

We are now arrived at a time when the word *baron* acquired a sense still more restricted than that which has hitherto belonged to it. Later than the reign of Edward II. we seldom find the word *baron* used in the chronicles to designate the whole of that formidable body who were next in dignity to the king himself, who formed his army and his legislative assembly, and who forced the king to yield points of liberty either to themselves as a class or to the whole community of Englishmen. The counts or earls, from this time, stand out more prominently as a distinct order. There were next introduced into that assembly persons under the denomination of dukes, marquesses, and viscounts; to all of whom was given a precedence before those barons who had not any dignity, strictly so called, annexed to the service which they had to render in parliament. The baron became the lowest denomination in the assembly of peers, possessing the same rights of discussing and voting with any other member of the house, but remaining destitute of those honorary titles and distinctions the possession of which entitled others to step before him. The term also ceased to be applied to those persons who, possessing a tenancy in chief, were yet not summoned by the king to attend the parliament; and the right or duty of attendance, from the time of King Edward I., has been founded, not, as anciently, upon the tenure, but on the writ which the king issued commanding their attendance.

Out of this has arisen the expression *barons by writ*. The king issued his writ to certain persons to attend in parliament, and the production of that writ constituted their right to sit and vote there. Copies of these writs were taken, and are entered on what is called the close roll at the Tower. The earliest are in the latter part of the reign of King Henry III., in

the forty-ninth of his reign, when the king was a prisoner in the hands of Simon de Montfort, who did what he pleased in the king's name. There are many such writs existing in the copies taken of them, of the reign of Edward I., and all subsequent kings, down to the present time. They are addressed to the archbishops and bishops, the prior of Saint John of Jerusalem, many abbots and priors, the earls and peers of the higher dignities as they were introduced into the peerage, and to a number of persons by their names only, as William de Vesey, Henry de Cobham, Ralph Fitzwilliam, William la Zouch, and the like—portions of the baronage whom the king chose to call to his councils. Upon this the question arises, whether when a person who was a baron by tenure received the king's writ to repair to the parliament, the receipt of the writ, and obedience to it, created in him a dignity as a lord of parliament which adhered to him during his life, and was transmitted to his heir. Upon this question the received opinion undoubtedly has been that a heritable dignity was created; that once a baron, by sitting under authority of the king's writ, always a baron; and that the barony would endure as long as there were heirs of the body of the person to whom the king's writ had issued. Upon this, the received opinion, there have been many adjudications of claims to dignities, and yet the Lords' Committee on this subject express very strong doubts respecting the doctrine, and contend that there are persons to whom the king's writ issued, and who took their seat accordingly, to whose heirs similar writs never went forth, though there was no bar from nonage, fatuity, or attainder. On the other hand, there is the strong fact, that we do find by the writs of summons, that they were addressed to the several members of many of the great families of England, as they rose in successive generations to be the heads of their houses: that, when it happened that a female heiress occurred, her issue was not unfrequently set in the place in parliament which her ancestors had occupied; and that when the new mode arose in the time of Richard II., of creating barons by patent, in which a

right was acknowledged in the posterity of the person so created, the ancient barons who had sat by virtue of the king's writ to them and their ancestors did not apply for any ratification of their dignity by patent, which they would have done had they not conceived that it was a heritable dignity, as secure as that granted by the king's patent.

The doubt of the Lords' Committees, however, shows that this is one of the many points touching the baron on which there is room for question. The practice, however, has been hitherto to admit that proof of the issuing of the writ, and of obedience to it, by taking a seat in parliament, or what is technically called proof of sitting, entitles the person who is heir of the body of a person so summoned to take his seat in parliament in the place which his ancestor occupied. Nevertheless, it would seem, from the report of the Lords' Committees, that in cases in which one person only of a family has been summoned at some remote period, and none of his known posterity near his time, this was no creation of the dignity of a baron, or of a peer in parliament, which could be claimed at this distance of time by any person, however clearly he might show himself to be the heir of the body of the person so summoned. But that, in cases in which the writ and the sitting can be proved respecting several persons in succession in the same line, as in Mauley, Roos, Furnival, Clifford, and many other families, there is an heritable dignity created, liable to no defeazance, and that this dignity may be claimed by any person who at this day can show himself to be the heir of the body of the person to whom the original writ issued.

In interpreting the phrase heir of the body, the analogy of the descent of the corporeal hereditaments in the feudal times is followed. That is, if a person die seised of the dignity of baron, and leave a brother and an only child, a daughter, the daughter shall inherit in preference to the brother, though the dignity has been transmitted from some person who is ancestor to them both. This fact clearly shows how close a connexion there is between the dignity and

the lands, the descent of both being regulated by the same principle. The consequence of this principle is, that through a portion of the baronage there has been an introduction of new families into the peerage without the sanction of the crown; for the heiress of one of these baronies may now bestow herself in marriage at her pleasure: and though it is not held that the husband can claim the benefit of the tenancy by courtesy principle (though doubts are entertained on this point), yet the issue of the husband may undoubtedly, whoever he may be, take his place in parliament in the seat which his mother would have occupied had she been a male. Practically, the effect of this upon the composition of the House of Peers has been very small indeed.

The case of co-heiresses demands a distinct notice, because it will lead to the explanation of a phrase which is often used by persons who seem not to have very distinct notions concerning what is implied by it. Lands may be divided, but a dignity is by its very nature indivisible. Thus, if the representative of one of the ancient barons of parliament die, leaving four daughters and no son, his lands may be divided in equal portions among them, and would be so divided according to the principle of the feudal system. But the dignity could not be divided; and as the principle of that system was against any distinction among co-heiresses (reserving the occurrence in the course of nature of persons dying leaving no son but several daughters, to be the means of preventing the too great accumulation of lands in the same person, and of breaking up from time to time the great tenancies), it made no provision that either the *caput baroniae* or a dignity that was indivisible should descend to the eldest or any daughter in preference to her sisters. It therefore fell into abeyance. [ABEYANCE.] It was not extinguished or destroyed, but it lay in a sort of silent partition among the sisters; and in this dormant, but not dead state, it lay among the posterity of the sisters. But if three of the four died without leaving issue, or if after a few generations the issue of three of them became utterly extinct, the barony would then revive, and the surviving sister, if

alive, or the next heir of her body, would become entitled to the dignity, and might, on proof of the necessary facts, claim a writ of summons as if there had been no suspension. Again, it is a part of the royal prerogative to determine an abeyance; that is, the king may select one of the daughters, and give to her the place, state, and precedency which belonged to her father; and then the barony will descend to the several heirs in succession of her body, as entire as if there had never been any state of abeyance. But this does not interfere with the rights of the other co-heirs, who, and whose posterity, remain in precisely the same position in which they stood before the king determined the abeyance in favour of a particular branch. In this way the barony of Clifford, which has several times fallen into abeyance, has been lately given by the king to a co-heir. The same was the case with the baronies of Roos and Berners, and indeed it is in a great measure to the exercise of this prerogative of the crown that we owe the presence in the House of Peers of barons who take their seats at the head of the bench, and date their sittings from the fourteenth and thirteenth centuries.

The principle of the feudal law, which was favourable to the claims of females, was fraught with ruin to noble houses. The great family which springs from Hugh Capet, and a few other great families of the Continent, have had the address to escape from the operation of the principle by availing themselves of what is called the Salic Law; and to this is owing that they still hold the rank in which we now see them, a thousand years after they first became illustrious. This must have been early perceived in England, and it was probably this consideration which led to the introduction of a class of barons, the descent of whose dignity should not be regulated by the principle of the feudal descent of hereditaments, but should be united inseparably with the male line of persons issuing from the stock of the original grantee. This innovation is believed to have first taken place in the reign of King Richard II., who in his eleventh year created John Beauchamp of Holt a baron, not merely

by writ of summons to parliament, but by a patent, in which it was declared that he was advanced to the same state, style, and dignity of a baron, and that the same state, style, and dignity should descend to the male heirs of his body. Thus and at this time the class of barons by patent arose. The precedent thus set was, with very few exceptions, followed in the subsequent reigns; and by far the great majority of persons who now occupy the barons' bench in parliament are the male representatives of persons on whom the dignity has been conferred, accompanied by a patent, which directs the course of its descent to be in the male heirs for the time being of the original grantee; and that should it ever happen that they are exhausted, the dignity becomes extinct.

It is unnecessary to enter into any examination of the privileges of the barons, which in no respect differ from those of the other component parts of the House of Peers. [PEERS OF THE REALM.]

The principal writers upon the subject of this article are, John Selden, in his work entitled 'Titles of Honour,' first published in 1614; Sir Henry Spelman, in his work entitled 'Archæologus, in modum Glossarii,' folio, 1626; Sir William Dugdale, in his 'Baronage of England,' 3 volumes, folio, 1675 and 1676; and in his 'Perfect Copy of all Summonses of the Nobility to the Great Councils and Parliament of this realm, from the 49th of Henry II. until these present times,' folio, 1685; 'Proceedings, Precedents, and Arguments on Claims and Controversies concerning Baronies by Writ, and other Honours,' by Arthur Collins, Esq., folio, 1734; 'A Treatise on the Origin and Nature of Dignities or Titles of Honour,' by William Cruise, 8vo., 2nd edit., 1823; 'Report on the Proceedings on the Claim to the Barony of Lisle, in the House of Lords,' by Sir N. H. Nicolas, 8vo., 1829. But the most complete information on this subject is contained in the printed 'Report from the Lords' Committees, appointed to search the Journals of the House, and Rolls of Parliament, and other Records and Documents, for all matters touching the Dignity of a Peer of the Realm.'

The word Barony is used in the pre-

ceding article only in its sense of a dignity inherent in a person: but the ancient law-writers speak of persons holding lands by barony, which means by the service of attending the king in his courts as barons. The research of the Lords' Committees has not enabled them to trace out any specific distinction between what is called a tenure by a barony and a tenure by military and other services incident to a tenancy in chief. The Hiltons in the north, who held by barony, have been frequently called the Barons of Hilton, though they had never, as far as is known, summons to parliament, or enjoyed any of the privileges which belong to a peer of the realm. Burford in Shropshire is also called a barony, and its former lords, the Cornwalls, who were an illegitimate branch of the royal house of England, were called, in instruments of authority, barons of Burford, but had never summons to parliament nor privileges of peerage. Barony is also some times, but rarely, used in England for the lands which form the tenancy of a baron, and especially when the baron has any kind of territorial addition to his name taken from the place, and is not summoned merely by his Christian and surname. This seems, however, to be done rather in common parlance than as if it were one of the established local designations of the country. The head of a barony (*caput baroniæ*) is, however, an acknowledged and well-defined term. It designates the castle or chief house of the baron, the place in which his courts were held, where the services of his tenants were rendered, and where, in fact, he resided. The castles of England were heads of baronies, and there was this peculiarity respecting them,—that they could not be put in dower, and that if it happened that the lands were to be partitioned among co-heiresses, the head of the barony was not to be dismembered, but to pass entire to some one of the sisters.

Barony is used in Ireland for a subdivision of the counties; they reckon 252 of the districts called baronies. Barony here is equivalent to what is meant by hundred or wapentake in England.

It remains to notice three peculiar uses of the word Baron:—

1. The chief citizens of London, York, and of some other places in which the citizens possess peculiar franchises, are called in early charters not unfrequently by the name of "the barons" of the place. This may arise either from the circumstance of the persons only being intended who were the chief men of the place; or that they were, in fact, barons, homagers of the king, bound to certain suit and service to the king, as it is known the citizens of London were and still are.

2. The Barons of the Cinque Ports are so called, probably for the same reasons that the citizens of London and of other privileged places are so called. The Cinque Ports, which were Hastings, Dover, Hythe, Romney, and Sandwich (to which afterwards Rye and Winchelsea were added), being ports opposite to France, were regarded by the earlier kings as places of great importance, and were consequently put under a peculiar governance, and endowed with peculiar privileges. The freemen of these ports were barons of the king, and they had the service imposed upon them of bearing the canopy over the head of the king on the day of his coronation. Here was the feudal service which marked them as persons falling within the limits of the king's barons. Those sent of themselves to parliament, either sitting in the lower house, might be expected to retain their appellation of barons.

3. The Barons of the Exchequer. The four judges in that court are so called, and one of them the Chief Baron. The court was instituted immediately after the Conquest, and it is probable that the judges were so denominated from the beginning. They are called barons in the earliest Exchequer record, namely, the Pipe Roll of 31 Henry I. It may here mean no more than the *men*, that is, the chief men, of the Exchequer. For their functions and duties see EXCHEQUER.

BARONAGE. This term is used, not so much to describe the collective body of the barons in the restricted sense which now belongs to the word as signifying a component part of the hereditary nobility of England, but the whole of that nobility taken collectively, without regard to the distinction of dukes, marquesses,

earls, viscounts, and barons, all of whom form what is now sometimes called the baronage.

In this sense the term is used in the title of one of the most important works in the whole range of English historical literature, for the sake of giving a short notice of which, we have introduced an article under this word. We allude to the 'Baronage of England,' by Sir William Dugdale, who was the Norroy King at Arms, and one of the last survivors of one of those eminent antiquarian scholars who, in the seventeenth century, raised so high the reputation of England for that particular species of learning.

Sir William Dugdale was the author of many other works, but his history of the baronage of England is the one to which reference is more frequently made; and there is this peculiarity belonging to his labours, that the 'Baronage' is quoted by all subsequent writers as a book of the highest authority; and it has, in fact, proved a great reservoir of information concerning the families who, from the beginning, have formed the baronage of England, from which all later writers have drawn freely.

The first volume was published in 1675; the second and third, which form together a volume not so large as the first, in 1676. The work professes to contain an account of all the families who had been at any period barons by tenure, barons by writ of summons, or barons by patent, together with all other families who had enjoyed titles of higher dignity, beginning with the earl of the Saxon times.

But Sir William Dugdale has collected from the chronicles, from the chartularies of religious houses, with which he became acquainted while preparing his great work on the history of the monasteries, from the rolls of parliament, in his time only to be perused in manuscript, and from the public records, which he could consult only in the public repositories, or in the extracts made from them by his fellow-labourers in historical research, and finally from the wills in the various ecclesiastical offices throughout the kingdom, the particulars of the lives of the most eminent men of our nation.



Not the least merit of the work is the careful reference to authorities. One passage in the preface to the Baronage contains a striking truth: "As the historical discourse will afford at a distance some, though but dim, prospect of the magnificence and grandeur wherein the most ancient and noble families of England did heretofore live, so will it briefly manifest how short, uncertain, and transient earthly greatness is; for of no less than two hundred and seventy in number, touching which this first volume doth take notice, there will hardly be found above eight which do to this day continue; and of those not any whose estates, compared with what their ancestors enjoyed, are not a little diminished; nor of that number, I mean two hundred and seventy, above twenty-four who are by any younger male branch descended from them, for aught I can discover."

BARONET, an English name of dignity, which in its etymology imports a Little Baron. But we must not confound it with the Lesser Baron of the middle ages [BARON], with which the rank of baronet has nothing in common; nor again with the banneret of those ages [BANNERET]; though it does appear that in some printed books, and even in the contemporary manuscripts, the state and dignity of a banneret is sometimes called the state and dignity of a baronet, by a mere error, as Selden promptly asserts ('Titles of Honour,' p. 354), of the scribe.

The origin of this rank and order of persons is quite independent of any previous rank or order of English society. It originated with King James I., who, being in want of money for the benefit of the province of Ulster in Ireland, hit upon the expedient of creating this new dignity, and required of all who received it the contribution of a sum of money, as much as would support thirty infantry for three years, which was estimated at 1095*l.*, to be expended in settling and improving the province of Ulster.

The principle of this new dignity was to give rank, precedence, and title without privilege. He who was made a baronet still remained a commoner. He acquired no new exemption or right to

take his seat in any assembly in which he might not before have been seated. What he did acquire we can best collect from the terms of the patent which the king granted to all who accepted the honour, to them and the heirs male of their bodies for ever:—1. Precedence in all commissions, writs, companies, &c., before all knights, including knights of the Bath and bannerets, except such knights bannerets as were made in the field, the king being present; 2. Precedence for the wives of the baronet to follow the precedence granted to the husband; 3. Precedence to the daughters and younger sons of the baronet before the daughters and younger sons of any other person of whom the baronet himself took precedence; 4. The style and addition of Baronet to be written at the end of his name, with the prefix of Sir; 5. The wife of the baronet to be styled Lady, Madam, or Dame. It was stipulated on the part of the king, that the number of baronets should never exceed two hundred; and that, when the number was diminished by the natural process of extinction of families, there should be no new creations to supply the places of those extinct, but that the number should go on decreasing. Further, the king bound himself not to create any new order which should lie between the baron and the baronet.

Another distinction was soon after granted to them. A question arose respecting precedence between the newly-created baronets and the younger sons of viscounts and barons, which the king disposed of by his own authority, in favour of the latter; and in the same instrument in which he declared the royal pleasure in this point, he directed that the baronets might bear, either on a canton or in an escutcheon on their shield of arms, the arms of Ulster, which, symbolical it seems of the lawless character of the inhabitants of that province, as is set forth in the preamble of the baronet's patent, was a bloody hand, or, in the language of heraldry, a hand gules in a field argent. And further, the king "to amplify his favour, this dignity being of his Majesty's own creation, and the work of his hands," did grant that every baronet, when he had attained the age of twenty-

one years, might claim from the king the honour of knighthood; that in armies they should have place near about the royal standard; and lastly, that in their funeral pomp they should have two assistants of the body, a principal mourner, and four assistants to him, being a mean betwixt a baron and a knight.

Such was the original institution of the order. To carry the king's intentions into effect, and especially to secure the payment of the money, commissioners were appointed to receive proffers for admission into the order. The instructions given to them throw further light on the original constitution of this body. They were to treat with none but such as were men of quality, state of living and good reputation worthy of the same, and they were to be descended of at least a grandfather by the father's side that bore arms; they were to be also persons possessed of a clear yearly revenue of 1000*l.*; and to avoid the envy and slander, as if they were men who had purchased the honour, the commissioners were to require an oath of them that they had not directly or indirectly given any sum of money for the attaining the degree and pre-eminence, except that which was necessary for the maintenance of the appointed number of soldiers.

The earliest patents bear date on May 22, 1611, on which day Sir Nicholas Bacon, of Redgrave, in Suffolk, knight, was admitted the first of the new order; and with him seventeen other knights and gentlemen of the first quality beneath the peerage. On the 29th of June following, fifty-four other patents were tested, and four more in September. The doubt respecting the precedence, and certain scruples which arose respecting this exercise of the royal prerogative, seemed to have occasioned a relaxation in the issue of patents, for no more were issued till the 25th of November, 1612, when fifteen other gentlemen were introduced into the order, making in the whole ninety-one. At this number they remained for some years; and it was not till 1622, a little before the death of King James, that the number of two hundred was completed.

In its more essential points, this order has undergone no modifications since its

establishment. But the following alterations have taken place:—1. There has been no adherence to the number two hundred, which by the original compact was to be the limit of the number of patents issued. Even the founder himself did not adhere to this part of the contract, for at his death two hundred and five patents had been issued. The excuse was that several of the baronets had been advanced to higher dignities, and that thus vacancies were created, which the king was at liberty to fill. But his successor, King Charles I., issued patents at his pleasure; and the number issued before his death amounted to four hundred and fifty-eight. Later kings have not thought themselves bound by this clause of the original compact; and the number of members of this order is now understood to have no other limit than the will of the king. 2. In the time of King Charles II. the custom was to remit the payment of the money for the support of the soldiers; and a warrant for this remission is now always understood to accompany the grant of a patent of baronetcy. 3. The rule of requiring proof of coat-armour for three descents has in numerous instances not been insisted on. But with these variations the order has remained unchanged.

Various works have been published containing accounts of the families of England who belong to this order. The first of these was published in 1720, entitled 'The Baronetage of England,' the author of which was Arthur Collins, whose similar work on the 'Peerage of England' is held in high estimation. It was his intention to give an account of all the families who had ever possessed this distinction, whether then existing or extinct. Two volumes were published, containing the first 152 families; but the work was not continued. In 1727 appeared another 'Baronetage,' in three volumes, containing valuable accounts of the families of all baronets then existing. A third 'Baronetage,' usually called Wotton's, appeared in 1741, in five large volumes, 8vo. This is indisputably the most carefully compiled, the fullest, and the best work of the kind. Another appeared in 1775, in three volumes, 8vo.;

and about the beginning of the present century appeared Mr. Betham's account of the families of the then existing baronets, in five volumes, 4to.

As King James I. established the order of English baronets for the encouragement of the planting and settling the province of Ulster, so he designed to establish an order of baronets in Scotland for the encouragement of the planting and settling of Nova Scotia. He died however before any proceedings had been taken. His successor adopted the scheme, and in 1625 granted certain tracts of land in Nova Scotia to various persons, and with them the rank, style, and title of baronets of that province, with precedence analogous to the precedence given to the baronets of England. Some additional privileges were given them; as that the eldest son of a baronet of Nova Scotia, during the lifetime of his father, might claim the honour of knighthood; and that the baronet might wear a ribbon and medal, with badge and insignia of the order. The addition to the coat-armour of the baronet was the arms of the province of Nova Scotia.

It was proposed that the number should be limited to 150. The first was Sir Robert Gordon of Gordonstown. There were frequent creations of this dignity till the union with Scotland in 1707, when the creations ceased.

Baronets of Ireland were instituted by King James I. in 1620, for the same purpose with the baronets of England. The money was paid into the Irish Exchequer. The first person who received the dignity was either Sir Dominick Sarsfield, the Chief Justice of the Common Pleas in Ireland, or Sir Francis Blundell, the Secretary of State.

**BARRISTER.** The etymology of this word has been variously given by different authors, and it would be unprofitable to enumerate the fanciful derivations which have been assigned to it. In French the word *barreau*, which signifies a bar of wood or iron, is also used to signify "a place in the audience where the advocates plead, and which is closed to prevent the press of people." (*Richelet, Diction.*) From the word *bar* then it is obvious that such a term as barrister

may be formed. But in England it is said that the term barrister arose from the arrangement of the halls of the different Inns of Court, which, for several centuries, have composed in England a kind of university for the education of advocates. [**INNS OF COURT.**] The benchers and readers, being the superiors of each house, occupied on public occasions of assembly the upper end of the hall, which was raised on a *dais*, and separated from the rest of the building by a bar. The next in degree were the *utter* barristers, who, after they had attained a certain standing, were called from the body of the hall to the bar (*i. e.* to the first place outside the bar), for the purpose of taking a principal part in the mootings or exercises of the house; and hence they probably derived the name of *utter* or outer barristers. The other members of the Inn, consisting of students of the law under the degree of utter barristers, took their places nearer to the centre of the hall and farther from the bar, and from this manner of distribution appear to have been called *inner* barristers. The distinction between utter and inner barristers is at the present day wholly abolished, the former being called barristers generally, and the latter falling under the denomination of students.

The degree of utter barrister, though it gave rank and precedence in the Inn of Court, and placed the individual in a class from which advocates were always taken, did not originally communicate any authority to plead in courts of justice. In the old reports of the proceedings of courts, the term is wholly unknown; serjeants and apprentices at law, who are supposed by Dugdale to be the same persons,\* being the only pleaders or advocates mentioned in the earlier year-books.

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\* It might be shown, by many instances, that serjeants are comprehended under the term *apprentices*. Thus in Plowden's 'Reports,' vol. i. p. 213, the great case of the Duchy of Lancaster is said to have been argued, among others, by "Carrel, apprentice, and Plowden, apprentice." This argument took place in the fourth year of the reign of Elizabeth; and it appears from the 'Chronica Juridicalia,' p. 165, that both Carrel and Plowden had been, before that time, created serjeants. The Latin designation of serjeant in legal documents is *serviens ad legem*.

In the time of Stow, however, who wrote in the latter part of Elizabeth's reign, it is clear that utter barristers were entitled to act as advocates, as he expressly says that persons called to that degree are "so enabled to be common counsellors, and to practice the law both in their chambers and at the barres." The exact course of legal education pursued at the Inns of Court before the Commonwealth is extremely uncertain, but it appears to have consisted almost entirely of the exercises called *readings* and *mootings*, which have been described by several old writers. The *readings* in the superior or larger houses were thus conducted:—The benchers annually chose from their own body two readers, whose duty it was to read openly to the society in their public hall, at least twice in the year. On these occasions, which were observed with great solemnity, the reader selected some statute which he made the subject of formal examination and discussion. He first recited the doubts and questions which had arisen, or which might by possibility arise, upon the several clauses of the statute, and then briefly declared his own judgment upon them. The questions thus stated were then debated by the utter barristers present with the reader, after which the judges and serjeants, several of whom were usually present, pronounced their opinions separately upon the points which had been raised. Readings of this kind were often published, and it is to this practice of the Inns of Court that we are indebted for some of the most profound juridical arguments in our language, such as Callis's reading on the Statute of Sewers, and Lord Bacon's on the Statute of Uses.

The process of *mooting* in the Inns of Court differed considerably from *reading*, though the general object of both was the same. On these occasions, the reader of the Inn for the time being, with two or more benchers, presided in the open hall. On each side of the bench table were two inner barristers, who declared in law French some kind of action, previously devised by them, and which always contained some nice and doubtful points of law, the one stating the case for the plaintiff, and the other the case for the

defendant. The points of law arising in this fictitious case were then argued by two utter barristers, after which the reader and the benchers closed the proceedings by declaring their opinions separately. These exercises appear to have lost much of their utility in the time of Lord Coke, who, in the 'First Institute,' p. 280 *a*, praises the ancient readings, but says that the modern performances were of no authority. Roger North says that Lord Keeper Guilford was one of the last persons who read in the Temple according to the ancient spirit of the institution. It is, however, beyond all doubt, that, as far back as we have any distinct memorials, all advocates must have passed through the mode of preparation adopted in the Inns of Court.

The serjeants, who, before the allowance of utter barristers to plead in courts, appear to have been the only advocates, were called from the Inns of Court by the king's writ, which was only issued at the discretion of the crown, and generally as a matter of favour; and indeed this continues to be the case at the present day. In process of time it became convenient and necessary to enable utter barristers to practise; but some time after they began to act as advocates in the superior courts, the terms upon which they were called to the bar, and allowed to plead, were prescribed by the Privy Council. Thus an order of council, regulating the proceedings of all the Inns of Court in this respect, dated Easter Term, 1574, and signed by Sir Nicholas Bacon as lord keeper, and several lords of council, directs that "none be called to the utter bar but by the ordinary council of the House (*i.e.* the Inn), in their general ordinary councils in term time; also, that none shall be utter barristers without having performed a certain number of mootings; also, that none shall be admitted to plead in any of the courts at Westminster, or to sign pleadings, unless he be a reader, bencher, or five years' utter barrister, and continuing that time in exercises of learning; also, that none shall plead before justices of assize unless allowed in the courts of Westminster, or allowed by the justices of assize." (See Dugdale's *Origines Judiciales*.) This appears to be

the last instance of the immediate interference of the Privy Council with the arrangements of the Inns of Court respecting calls to the bar. In the reigns of James I. and Charles I., the judges and benchers of the several Inns conjointly made orders on this subject, and, since the Commonwealth, the authority to call persons to the degree of barrister-at-law has been tacitly relinquished to the benchers of the different societies, and is now considered to be delegated to them from the judges of the superior courts. In conformity with this view of the subject, the practice has been, in the several cases of a rejection of applications to be called to the bar which have lately happened, to appeal to the judges, who either confirm or reverse the decision of the benchers.

Previously to a general arrangement made by all the Inns of Court in 1762, the qualifications required for being called to the bar varied extremely, and no uniform rule was observed at the different houses. In the first year of the reign of James I. it was solemnly ordered by a regulation signed by Sir Edward Coke, Sir Francis Bacon, and other distinguished names, that no person should be admitted into any of the Inns of Court who was not a gentleman by descent. Other regulations were occasionally made, as to the length of standing required, and the number of persons to be called at each time, which were often inconsistent with each other. The greatest inconvenience, however, arose from the absence of uniformity in the practice of the different Inns, as to the qualifications which they respectively required. To remedy this evil, it was determined, in 1762, by the concurrence of all the Inns of Court, to adopt a common set of rules for their guidance in this respect; and at the present day, the general rule as to qualification in all the Inns of Court is, that a person, in order to entitle himself to be called to the bar, must be twenty-one years of age, have kept twelve terms, and have been for five years, at the least, a member of the society. If he be a Master or Bachelor of Arts of either of the English universities, or of Trinity College, Dublin, it is sufficient if he has kept twelve terms and has

been three years a member of the Inn by which he desires to be called to the bar. By an order made by the benchers of the Inner Temple, in Trinity Term, 1829, every person proposed for admission to that house must, previously to his admission, undergo an examination by two barristers appointed by the bench, who are required to certify whether the individual is proficient in "classical attainments and the general subjects of a liberal education." This regulation has not been adopted at any of the other three Inns of Court. The expense of being called to the bar amounts to between 80*l.* and 90*l.*, exclusive of the three years' commons and the admission fees. In order to qualify a person for the bar in Ireland, it is necessary that he should have kept eight terms at one of the four Inns of Court in London, and nine terms at the King's Inn in Dublin. [ADVOCATES, FACULTY OF; COUNSEL; INNS OF COURT.]

The following statement of the regulations now in force as to the admission of advocates in the ecclesiastical and admiralty courts of Doctors' Commons, and in the provincial court of York, and the present number of advocates in these courts, is taken from a Parliamentary Return (No. 282, sess. 1844). According to the present rules, a candidate for admission as an advocate is required to deliver in to the office of the vicar-general of the province of Canterbury a certificate of his having taken the degree of Doctor of Laws, signed by the registrar of the university to which he belongs. A petition, praying that in consideration of such qualification the candidate may be admitted an advocate, is then presented to the archbishop, who issues his fiat for the admission of the applicant, directed to his vicar-general, who thereupon causes a rescript or commission to be prepared, addressed to the official principal of the Arches Court of Canterbury, empowering and requiring him to admit the candidate an advocate of that court. This commission contains a proviso that the person to be admitted shall not practise for one whole year from the date of his admission. The candidate is admitted on one of the regular sessions of the Arches Court; the rescript of the archbishop

being first read, and the oaths of allegiance and supremacy with two other oaths being taken. This admission in the Arches Court qualifies the person for practising in any of the other ecclesiastical courts of Doctors' Commons. The present number of advocates is 24.

Advocates admitted in the Arches Court of Canterbury are admitted to be advocates of the High Court of Admiralty of England upon their alleging such their admission in the Arches Court. The present number of advocates is 24.

The advocates of the provincial courts at York must be barristers-at-law; and they are admitted as advocates of the Consistory Court there, with power to practise in all other the archbishop of York's courts, by virtue of his grace's fiat directed to his chancellor: the stamp-duty on their admission is 50*l*. But it is not required that they should be doctors of civil law, nor does the constitution of Archbishop Pickham, 9 Edw. I., 1221, apply to them. The number of advocates, as far back as any record shows, has been limited to four; but the present number is only two. The admitted advocates of the courts have exclusive right to practise therein, though in cases of weight and difficulty, counsel on the northern circuit are occasionally taken in to their assistance.

**BARRISTER**, in Scotland. [ADVOCATES, FACULTY OF.]

**BARTER**. When one commodity is exchanged directly for another, without the employment of any instrument of exchange which shall determine the value of the merchandise, the transaction is called Barter. All trade resolves itself into an exchange of commodities; but the commercial exchangers of one commodity for another effect their exchanges by a money-payment, determined by a market-value. This is a sale. Swift, in his attack upon Wood's halfpence, which he considered as destructive of the money-standard of value, says, "I see nothing left us but to *barter* our goods, like the wild Indians, with each other." The general evils of such a state are obvious; and they create dishonest attempts in one exchanger to cheat the other. The North American Indians obtain a few of

the comforts and luxuries of civilized life, by exchanging skins for manufactured articles. The Indians meet the traders; each man divides his skins into lots, which have a relative value to each other, as that two otter skins are equal to one beaver. For one lot he wants a gun, or a looking-glass, or a blanket, or an axe. The trader has the articles to give the Indian in exchange. Twenty beaver-skins are given for a gun; the gun costs a pound in Birmingham; the beaver-skins are worth more than twenty times the amount in London. If the Indians were brought into more general contact with the exchangers of civilised life, they would regulate their exchanges by a money-standard, and would obtain a fairer value for their skins.

The term *barter* seems to have been derived from the languages of southern Europe: *baratar*, Spanish; *barattare*, Italian,—which signify to cheat as well as to barter: hence, also, our word *Baratry*. The want of a standard of value in all transactions of barter, gives occasion to that species of overreaching which prevails from an ignorance of the real principles of trade, by which all exchangers are benefited through an exchange. The examples of barter, however, without any reference to some standard of value, become more and more uncommon as the commercial intercourse of mankind advances. A skin of corn, or a stone vessel of corn, among some of the Indian tribes, is established as a standard of value; councils are held to determine the rate of exchange; and a beaver-skin is thus held to be worth so many more skins of corn than a blanket. This is an approach to a standard of value, which almost takes the transaction out of the condition of being a barter. In the trade carried on between Russia and China, the exchanges of merchandise are directly effected, but the comparative value of the merchandise is determined by a money-standard. This is clearly not barter. The Indian corn-measure of value is something like the animal measure which formerly existed in this country, when certain values being affixed to cattle and slaves, they became an instrument of exchange, under the

name of *living* money. Amongst the northern nations skins used to be a standard of value: the word *râha*, which signifies money in the Esthonian language, has not lost its primitive signification of skins amongst the Laplanders. When nations come to use any standard of value, whether skins, as in northern Europe, or dhourra (pounded millet, *Sorghum vulgare*), as in Nubia, or shells, as in parts of India, their transactions gradually lose the character of barter. If wages are paid in articles of consumption, as in some districts of England, the transaction is called *truck*:—*troc* is the French for barter. [TRUCK SYSTEM.]

The exchanges of a civilized people amongst themselves, or with other countries, are principally carried on by bills of exchange; the actual money-payment in a country by no means represents the amount of its commercial transactions. If any sudden convulsion arise which interrupts the confidence upon which credit is founded, bills of exchange cease to be negotiable, and exchangers demand money payments. The coin of a commercial country being insufficient to represent its transactions, barter would be the natural consequence if such a disastrous state of things were to continue. Thus, when Mr. Huskisson declared in 1825 that the panic of that year placed this country "within forty-eight hours of barter," he meant that the credit of the state would have been so reduced, that its notes would not have been received, or its coin, except for its intrinsic value as an article of exchange; and that the bills of individuals would have been in the same case. Barter, in this case, would be a backward movement towards uncivilization.

**BASTARD.** The conjectures of etymologists on the origin of this word are various and unsatisfactory. Its root has been sought in several languages:—the Greek, Saxon, German, Welsh, Icelandic, and Persian. For the grounds on which the pretensions of all these languages are respectively supported, we refer the curious to the glossaries of Ducange and Spelman, the more recent one of Boucher, and to the notes on the title *Bastard* in Dodd and Gwillim's edition of Bacon's *Abridgment*, vol. i., p. 746.

Among old English writers it is applied to a child not born in lawful wedlock; and as such he is technically distinguished from a *mulier* (*filius mulieratus*), who is the legitimate offspring of a *mulier* or married woman.

The civilians and canonists distinguish illegitimate children into four or five classes not recognised in the English law; it may, however, be worth while to remark, that the familiar term *natural*, applied by us to all children born out of wedlock, is in that classification confined to those only who are the offspring of unmarried parents, living in concubinage, and who labour under no legal impediment to intermarriage. Children of the last-mentioned class are, by the civil and canon law, capable of legitimation by the subsequent union of the parents, or by other acts which it is needless here to particularize. (Heineccius, *Syntag.*, vol. i. p. 159; Ridley's *View*, &c., p. 350, ed. 1675; Godolphin's *Repertorium Canonici*, chap. 35.)

The English very early adopted strict notions on the subject of legitimacy; and when the prelates of the 13th century were desirous of establishing in this country the rule of the canon law, by which bastard children are legitimated upon the subsequent intermarriage of their parents, the barons assembled at Merton (A.D. 1235) replied by the celebrated declaration, "that they would not consent to change the laws of England hitherto used and approved."

It has been observed that this sturdy repugnance to innovation was the more disinterested, inasmuch as the lax morality of those days must probably have made the proposition not altogether unpalatable to many to whom it was addressed. The opposition, therefore, seems to have been prompted by a jealousy of ecclesiastical influence, which was at that time ever watchful to extend the authority of the church by engrafting on our jurisprudence the principles of the canon law.

On another point our ancestors were less reasonable: for it was very early received for law, not only that the fact of birth after marriage was essential to legitimacy, but that it was conclusive of it.

Hence it was long a maxim that nothing but physical or natural impossibility, such as the continued absence of the husband beyond seas, &c., could prevent the child so born from being held legitimate, or justify an inquiry into the real paternity.

Their liberality in the case of posthumous children was also remarkable: for in the case of the Countess of Gloucester, in the reign of Edward II., a child born one year and seven months after the death of the father, was pronounced legitimate; a degree of indulgence only exceeded by the complaisance of Mr. Sergeant Rolfe, in the reign of Henry VI., who was of opinion that a widow might give birth to a child at the distance of seven years after her husband's decease, without wrong to her reputation. (Coke upon Littleton, 123 b. note by Mr. Hargrave; Rolle's *Abridgment*, "Bastard;" and Le Marchant's *Preface to the case of the Banbury Peerage*.)

The law now stands on a more reasonable footing, and the fact of birth during marriage, or within a competent time after the husband's death, is now held to be only a strong presumption of legitimacy, capable of being repelled by satisfactory evidence to the contrary.

Another curious position of doubtful authority is also found in our old text writers; namely, that where a widow marries again so soon after her husband's decease that a child born afterwards may reasonably be supposed to be the child of either husband, then the child, upon attaining to years of discretion, shall be at liberty to choose which of the two shall be accounted his father. When a man dies, and his wife alleges that she is with child, those who may be entitled to the property in case there is no child born, or in case the child who is born is illegitimate, that is, not the child of the husband, may have a writ *De Ventre Inspiciendo*, the object of which is to ascertain if the woman is pregnant. [VENTRE INSPICIENDO, DE; WRIT.]

The legal incapacities under which an illegitimate child labours by the law of England are few, and are chiefly confined to the cases of inheritance and succession. He is regarded for most purposes as the son of nobody, and is there-

fore heir-at-law to none of his reputed ancestors. He is entitled to no distributive share of the personal property of his parents, if they die intestate; and even under a will he can only take where he is distinctly pointed out in it as an object of the testator's bounty, and not under the general description of 'son,' 'daughter,' or 'child,' by which legitimate children alone are presumed to be designated. He can also take under a will before his birth, if he is particularly described. He may, however, acquire property himself, and thus become the founder of a fresh inheritance, though none of his lineal descendants can claim through him the property of his reputed relations. If he dies without wife, issue, or will, his lands and goods escheat to the crown, or lord of the fee. In the former event it is usual for the crown to resign its claim to the greater part of the property on the petition of some of his nearest *quasi* kindred. There is a clause (§ 11) in the new Savings Banks Act (7 & 8 Vict. c. 83) which allows the sum invested by a depositor, being illegitimate and dying intestate, to be paid to such person or persons as would be entitled to the same provided the depositor had been legitimate.

Strictly speaking, a bastard has no surname until he has acquired one by reputation, and in the meantime he is properly called by that of his mother. The mother of an illegitimate child is entitled to its custody, although if such child, within the age of nurture, be fraudulently taken from the mother by the putative father, the order of the justices to restore it to its mother is not sufficient. The remedy is by *habeas corpus* in the Court of King's Bench. Lord Stowell was of opinion that the father of an illegitimate child "had very little (if any) parental authority." (Phillimore's *Burns*, i. pp. 130—1.) Before the passing of 18 Eliz. c. 3, it is considered that the custody of an illegitimate child was in the hands of the parish, and after this enactment it was a question whether the father could take the child out of the possession of the parish.

The first English statute which provides for the maintenance of illegitimate



children, is the 18th of Elizabeth, cap. 3, which conferred on justices of the peace the power of requiring from one or both of the parents a weekly or other payment for their support, and in default thereof, of committing them to jail until they found surety to make such payment, or else to appear at the next quarter-sessions to abide the order of the justices. The 7th James I. c. 4, punished a woman having a bastard chargeable to the parish, with one year's imprisonment and labour in the house of correction; and for a second offence she was to be committed to the house of correction until she could find sureties for her good behaviour. The 30th of Geo. III. c. 51, repealed this power, and enabled the justices to sentence the woman to imprisonment for any period not less than six weeks nor more than a year. As bastards were frequently left to the charge of the parish by the parents running away, an act was passed (13 & 14 Car. II. c. 11) which enabled the overseers to indemnify themselves at the cost of the putative father. By 6th Geo. II. c. 31, and 49th Geo. III. c. 68 (which repealed the former act and then re-enacted it with some variations), on a single woman declaring herself to be pregnant, and charging any person with being the father, a justice's warrant could be obtained for his apprehension, on the application of the overseer or any substantial householder, and such person might be committed to jail, unless he agreed to indemnify the parish. The justice had no power to examine into the merits of the case, but was compelled to act upon the woman's oath, and to commit the putative father if the necessary surety was not provided. The man had the option of marrying the woman, contributing to the maintenance of the child, or of going to jail. Under the act of Elizabeth and later acts of parliament, down to the passing of the Poor Law Amendment Act in 1834, the usual practice was for the mother to apply for relief to the parish officers, by whom she was carried before the magistrates to be interrogated respecting the paternity of the child. An order of filiation was then made, and the reputed father was ordered to contribute

a weekly payment, or was bound to indemnify the parish against the future expenses of maintenance. "In form the proceeding was against the putative father for the indemnification of the parish; but in substance it was a proceeding of the mother against the putative father, the benefit of which accrued to her, and to which the parish was little more than a nominal party, except when it made good the father's default. It was in truth an action of the mother against the putative father, for a contribution towards the expenses of their common child, in which, by a fiction of law, the parish was plaintiff." (*On the law concerning the maintenance of bastards, by the Poor Law Commissioners*, Parl. paper, No. 31, Session 1844.) In this state of things, the Commissioners of Poor Law Inquiry (1834) recommended that the mother of a bastard should be rendered liable for its maintenance, but that she should be exempted from punishment under 30th Geo. III. c. 51, and that all enactments charging the putative father should be repealed. The Bill for amending the Poor Law, brought in in 1834, contained clauses for giving effect to this recommendation; but a clause was introduced into the Bill in the Commons authorising the making of orders of affiliation in petty sessions. In the House of Lords the Bill was amended in the form in which it ultimately passed (4th & 5th William IV. c. 76, §§ 72—76). The law now was, that the parish might still apply for an order upon the putative father, but this was to be done at the quarter-sessions, instead of the petty sessions; and corroborative evidence was required; and other difficulties and onerous conditions were thrown in the way, which increased the trouble and expense of all parties, and showed that "the object of the Legislature was to impede rather than encourage the applications to quarter-sessions, and by so doing to conform partially to the recommendation of the Commissioners of Inquiry, that the remedy against the supposed father should be abolished altogether." (*Report of Poor Law Commissioners to Secretary of State*, May, 1835.) The number of bastards affiliated in England and

Wales, in the years ending respectively 25th of March, 1835 and 1836, was 12,381 and 9,686. The practice of affiliation was therefore rapidly diminishing under the Poor Law Amendment Act, but the obstacles which it threw in the way occasioned great complaints. It was alleged that the putative father was not punished, while the consequences fell solely upon the woman. In 1839, therefore, an act was passed (2 & 3 Vict. c. 85) which transferred the power of making orders in bastardy from the quarter sessions to any two justices in petty sessions, and facilitated instead of discouraged affiliations. The controlling power of the Poor Law Commissioners was here of use in preventing evils which might otherwise have attended a change from one principle to another of an opposite kind. Payments by putative fathers under orders in bastardy have, under 2 & 3 Vict., "been limited to the cost of the relief actually given; they have been made *bonâ fide* to the parish, and therefore the parish has not been a purely formal party to the proceeding, and a mere screen to the woman." (*Report of Poor Law Commissioners*, Jan. 31st, 1844.) The law respecting bastardy has been still more recently the subject of legislation, and by 7 & 8 Vict. c. 101, the principle of charging the putative father is totally different from that of any previous law on the subject. "Formerly the remedy was intended exclusively for the parish: now the mother alone can obtain it. . . . Formerly the chargeability of the child, either in fact or in prospect, was the ground of the remedy: now the actual or probable chargeability of the child is made wholly immaterial." (*Official Circular*, No. 39, Oct. 1, 1844.) The officers of all parishes and unions are deprived of the power of applying for orders of affiliation with regard to illegitimate children born before or after the passing of the act, and the mother alone is entitled to apply for such order; but in case of the death or incapacity of the mother, the guardians (or if there are no guardians, the overseers) may enforce an order, although they cannot apply for one, and payments are to be made to some person appointed by the justices to have

the custody of the child, and not to the parish officers; and such person is to receive the child on the condition that it is not to be chargeable. Parish officers are guilty of misdemeanour for endeavouring to promote the marriage of the mother of a bastard by threats or promises respecting any application to be made for maintenance. The mother of a bastard may summon the putative father before the petty sessions within twelve months after the birth of the child, or at any time on proof of money having been paid to her in respect of such child. The justices may then make an order on the putative father for maintenance of the child and other costs, and enforce the same by distress and commitment; but not more than thirteen weeks' arrears can be claimed. The sum paid for maintenance is to be paid to the mother, and if she neglect or desert her offspring she may be punished under the Vagrant Act (5 Geo. IV. c. 83). The liability of the mother, while unmarried or a widow, continues until the child is sixteen. Any person having the care of a bastard child under an order of maintenance, who maltreats it, or misapplies moneys paid by the putative father for its support, is liable to a penalty of 10*l.* on conviction before two justices. The putative father may appeal to the quarter-sessions, as under the old law. All orders for the maintenance of a bastard cease after it has attained the age of thirteen, or on the marriage of the mother. Existing orders are to continue, but those made before August 14, 1834, are to cease on the 1st of January, 1849.

According to the census of 1831 the proportion of illegitimate to legitimate births was, in the year 1830, as 1 to 20 in England, and the proportion in Wales was as 1 to 13. But the more accurate returns obtained under 6 & 7 Wm. IV. c. 86, for the registration of births, marriages, and deaths, show the proportion of illegitimate births to be greater than one in twenty. Out of 248,554 registered births in England, 15,839 were illegitimate, or one in sixteen. (*Fifth Report of Registrar-General*, p. 10.) We may probably assume that the illegitimate births in England and Wales are somewhat higher

than one in sixteen, and the number of such births in the year ending 30th of June, 1841, would therefore be about 33,000, and as the females aged from 16 to 45 were about 3,500,000, the proportion of those who gave birth to an illegitimate child in that year was about one in 109. The Commissioners for taking the census of Ireland in 1841, do not give any statement respecting illegitimate births, but it is believed that they are fewer than perhaps in any other country. In Paris in 1842, out of 28,218 births, 10,286, or one in 2·7, were illegitimate, of whom 4621 were born at the hospitals, and 5665 at home; and of the illegitimate children 8231 out of 10,286 were not recognised by either parent. The number of illegitimate children born in France in 1841 was 70,938, and of children born in wedlock there were 906,091. The proportion of illegitimate births was therefore as 1 to 12·929, or nearly 10 in 130. (*Annuaire du Bureau des Longitudes*, 1844.) In 1834 the number of illegitimate births in Prussia was 40,656 out of 555,282 births, or 1 in 13·6. From 1820 to 1834 the proportion was 1 in 14·4. (*Trans. of London Stat. Soc.* vol. i. part 1.) In 1837 the number of illegitimate children born in Prussia was 39,501, and as the number of females from 16 to 45 was 2,983,146, 1 in every 75 of this number had in that year given birth to an illegitimate child. (Laing's *Notes of a Traveller in Prussia*, &c., p. 167.) The same writer, in his 'Journal of a Residence in Norway,' states, p. 151, that the proportion of legitimate to illegitimate children in that country is about 1 in 5; and he gives an instance of a country parish where the proportion from 1826 to 1830 was 1 in 3·2. Mr. Laing states in his 'Tour in Sweden,' that in 1838 there were born in Stockholm 2714 children, and of this number 1577 were legitimate and 1137 were illegitimate, the proportion being 1 illegitimate to 1½ legitimate, that is, for every 15 legitimate there were 10 illegitimate. In the town population of Sweden, exclusive of Stockholm (and the towns are generally of very small size, without commerce or manufactures), the proportion was about 1 illegitimate to 4 legitimate births.

The following statements are taken from Turnbull's *Austria*, vol. ii. p. 200, not as illustrations of national morals, in which light the author considers them fallacious, but "as bearing on certain great questions of public good." In Vienna, in 1834, the proportion of illegitimate to legitimate births was as 10 to 12; at Gratz as 10 to 6; at Milan as 10 to 28; at Venice as 10 to 28. In Lower Austria, in the same year, the proportion of illegitimate births was 1 in 4; in Upper Austria 1 in 5; in Styria 1 in 3; in the Tyrol 1 in 17; in Bohemia 1 in 16; in Moravia and Silesia 1 in 7; in Galicia 1 in 12; in Dalmatia 1 in 2; in Lombardy 1 in 25; in the Venetian Provinces 1 in 3; in Transylvania 1 in 36; in the whole Empire, exclusive of Hungary, 1 in 9.

The repute in which spurious children have been held has varied in different ages and countries. In some they have been subjected to a degree of opprobrium which was inconsistent with justice; in others the distinction between base and legitimate birth appears to have been but faintly recognised, and the child of unlicensed love has avowed his origin with an indifference which argued neither a sense of shame nor a feeling of inferiority. When the Conqueror commenced his missive to the Earl of Bretagne by the words, "I, William, surnamed the Bastard," he can have felt no desire to conceal the obliquity of his descent, and little fear that his title would be defeated by it. Accordingly, history presents us with many instances in which the succession not only to property, but to kingdoms, has been successfully claimed by the spurious issue of the ancestor. It is, however, very improbable that in any state of society where the institution of marriage has prevailed, children born in concubinage and in lawful wedlock should ever have been regarded by the law with exactly equal favour. (See Ducange, *Glossary*, tit. "Bastardus.")

Those who may be curious to learn what fanciful writers have urged in proof of the superior mental and physical endowments of illegitimate issue, may refer to Burton's *Anatomy of Melancholy*, vol.

ii. p. 16 (ed. 1821); Pasquier, *Recherches*, chap. "De quelques mémorables bâtarde;" and Pontus Heuterus, *De Libertate Hominis Nativitate*. See also Shakspeare's *Lear*, act i. scene 2; and the observations of Dr. Elliotson in his edition of Blumenbach's *Physiology*, in notes to chap. 40.

In Scotland the law of Bastardy differs considerably from the English, chiefly in consequence of its having adopted much of the Roman and pontifical doctrines of marriage and legitimacy.

Thus, in England, in the case of a divorce in the spiritual court, "*à vinculo matrimonii*," the issue born during the coverture are bastards. But agreeably to the judgment of the canons, 'Decret. Greg.,' lib. iv. tit. 17, c. 14, the Scottish writers, proceeding on the *bona fides* of the parties, incline to a different opinion, *in favorem prolis*; and it will be recollected that when Secretary Lethington proposed to Mary Queen of Scots a divorce from Darnley, James Earl of Bothwell, to quiet her fears for her son, "allegit the exampill of himself, that he ceissit not to succedd to his father's heritage, without any difficultie, albeit thair was divorce betwixt him and his mother." The point has not, however, received a judicial determination, and cannot therefore be regarded as settled, though of the tendency of the law there can be little doubt. Even in the case of a marriage between a party divorced for adultery and the adulterer, which by stat. 1600, c. 20, following the civil law, is declared "null and unlawful in itself, and the succession to be gotten of sik unlawful conjunctions unliabie to succedd as heires to their said parents;" the issue are not accounted bastards, "though," as Stair adds, b. iii. tit. 3, § 42, "they may be debarred from succession." Of course, the issue of every legal marriage are lawful, and therefore the children not only of marriages regularly solemnized, but also of every union acknowledged by the law as a marriage, are alike legitimate. The same may be said of children legitimated by the subsequent intermarriage of their parents; but the situation of these is, as we shall immediately see, somewhat anomalous.

The Scottish law has adapted two species of legitimation, which, in the language of the civil law, they call legitimation *per subsequens matrimonium*, and legitimation *per rescriptum principis*.

The former of these was introduced into the Roman jurisprudence by a constitution of the Emperor Constantine the Great, but did not become a permanent method of legitimation till the time of Justinian. It was afterwards taken up by the Roman pontiffs and disseminated by the ecclesiastics throughout Europe. At the parliament of Merton, however, the doctrine met with a repulse from the barons of England, as already mentioned.

Though the English law was preserved inviolate, yet the ecclesiastics did not cease to press the point among the people, and to this day we may remark traces of the custom in some of the remoter districts of the island. The doctrine was certainly no part of the ancient common law of Scotland any more than of England; but it is now settled law there, and its rise and establishment are at once accounted for, when we consider the former strong or rather paramount influence of the canon and civil laws in that country. The principle on which the doctrine rests is the fiction of law that the parents were married at their child's birth. If, therefore, the parents could not have then legally married, or if a mid impediment has intervened between the birth and the intermarriage, the fiction is excluded, and previous issue will not be legitimated by marriage. Further, it is held that if the child was born, or if the intermarriage took place, in a country which does not acknowledge the doctrine of legitimation by subsequent marriage, the child will remain a bastard; the character of bastardy being in the one case indelible, and the marriage in the other ineffectual to create legitimacy. On the other hand, a child legitimated *per subsequens matrimonium* is entitled to all the rights and privileges of lawful issue, and will, as respects inheritance and the like, take precedence of subsequent issue born in actual wedlock: yet in England the judges have held that a child born in Scotland before marriage, and legitimated in Scotland by subsequent marriage,

the parents also being domiciled there, though in point of fact the first-born son, and in status and condition, by comity, legitimate in England, will not succeed to land in England. (*Doe dem. Birtwhistle v. Vardill*, 5 Barn. and Cress. 438. The opinion of the judges was confirmed by the House of Lords, July, 1840.)

Legitimation *per rescriptum principis* proceeds on a less abstract and more generally acknowledged principle than the preceding. Though therefore it is said to have been invented by Justinian, and copied by one of the popes of Rome, yet concessions in the nature of letters of legitimation are not peculiar to the Roman law. The form of these letters seems to have been borrowed by the Scots immediately out of the old French jurisprudence: their clauses are usually very ample, capacitating the grantee for all honours and offices whatsoever, and to do all acts in judgment or outwith, and, in short, imparting to him all the public rights of lawful children and natural born subjects, together with a cession of the crown's rights by reason of bastardy; but as the crown cannot affect the rights of third persons without their consent, letters of legitimation do not carry a right of inheritance to the prejudice of lawful issue.

As in the Mosaic law a bastard was debarred from the congregation, so according to the canons he is in strictness incapable of holy orders; and, indeed, it has been the policy of most nations to incapacitate bastards in divers ways, that if men will not be deterred from immorality by a sense of the injury accruing to themselves, they may by a consideration of the evils resulting to their offspring. But whatever may be the operation of those incapacities, they are felt by all to be wrongs inflicted on the innocent; and, as Justinian properly observed when he made legitimation *per subsequens matrimonium* a perpetual ordinance, "indigni non sunt qui alieno vitio laborant." Accordingly this doctrine is now obsolete in England, and nearly so in Scotland. By 6 Wm. IV. c. 22, the only remaining incapacity in Scotland—the want of power to make a testament in the particular case of the bastard having no lawful issue

—was done away with; the preamble of the act reciting that it is just, humane, and expedient that bastards or natural children in Scotland shall have the power of disposing of their moveable estates by testament. Letters of legitimation were formerly necessary in all cases; but it was held that, as the crown's right of succession was excluded by the existence of issue, a bastard who had lawful issue might dispose of his goods by testament in any way he thought fit. Since the passing of 6 Wm. IV. c. 22, there is now no distinction between a bastard and another man; and so he may dispose of his heritage in *liege poustie*, and of his moveables *intervivos*, and by testament, and he may succeed to any estate, real or personal, by special destination. To his lawful children, also, he may appoint testamentary guardians; and his widow has her provisions like other relicts. It is to be noted, however, that in the eye of the law a bastard is *nullius filius*; and being thus of kin to nobody, he cannot be heir-at-law to any one, neither can he have such heirs save his own lawful issue. Where a bastard dies leaving no heir, the crown, as *ultimus heres*, takes up his property, which, if it be land holden in capite, is at once consolidated with the superiority; but if it be holden of a subject, the crown appoints a donatary, who, to complete his title, must obtain decree of *declarator of bastardy*, a process in the nature of the English writ of *escheat*, and thereupon he is presented by the king to the superior as his vassal.

But though bastards are legally *nullius filii*, yet the law takes notice of their natural relationship to several purposes, and particularly to enforce the natural duties of their parents. These duties are comprised under the term *aliment*, which here, as in the civil law, comprehends both maintenance and education; including under this latter term, as Lord Stair says (b. i. tit. 5, sec. 6), "the breeding of them for some calling and employment according to their capacity and condition." These were at least the principles on which the courts proceeded in awarding aliment to children. In determining who is the father of a bastard, the Scots courts

again proceed on the principles of the civil law. In Scotland there must first be semiplenary evidence of the paternity, and then, when such circumstantial or other proof of that fact is adduced as will amount to *semiplena probatio* (equivalent to the "corroborative evidence" required in England), the mother is admitted to her oath in supplement. The whole aliment is not due from one parent but from both parents. This is the principle; and therefore in determining what shall be payable by the father, the ability of the mother to contribute is also considered. The absolute amount of aliment, however, is in the discretion of the court, as is likewise its duration. Where the parties are paupers, the bastard's settlement is not the father's but the mother's parish, and if that is unknown, the parish of its birth.

The mother of a bastard is entitled to its custody during its infancy; and it would seem that afterwards the father may take the rearing of the child into his own hand, and also, perhaps, nominate to it tutors and curators. This last power has been denied; if it does not exist, it ought to be now bestowed by act of parliament.

In *France* the condition of illegitimate children is determined by the Code Civil (tit. vii. caps. 1 & 2, §§ 312-342). A husband can disavow a child of his wife's on proof that during a period of from three hundred to one hundred and eighty days before its birth it was physically impossible, either from absence or accident, that he could have cohabited with his wife; but impotency cannot be alleged as a cause of disavowal; nor adultery on the part of the wife, unless the birth has been concealed from the husband, in which case the matter may be decided upon its merits. A child born before the one hundred and eightieth day after the marriage cannot be disavowed if it is proved that the husband knew of the pregnancy before the marriage; if he has been present at the birth or has signed the registry of birth; or if the child is not sufficiently strong to afford hope that it will live. The legitimacy of a child born three hundred days after marriage cannot in any way be contested; and in

other cases proceedings must take place within a month if the husband is on the spot, a reasonable delay being allowed for absence. Children born out of wedlock, except those born of adulterous or incestuous connections, can be legitimated by the subsequent marriage of the father and mother, when both parents have legally recognised them before marriage, or when they recognise them by the act of marriage. The legitimation may be retrospective, and in favour of illegitimate children who have died and left descendants, and the latter will partake of the full advantage of such a step. Children legitimated by a subsequent marriage enjoy precisely the same rights as those born after marriage. A deed of recognition by the father only is binding only on him. Recognition during marriage by the husband or wife alone, in favour of an illegitimate child of either, born before their marriage, and not their joint offspring, can only affect one of them, and does not prejudice the rights of their children born in wedlock; but in case of a divorce, and if there are no other children, such recognition will be taken into account. In contested cases the question as to the putative father is interdicted and only the maternity is admitted. The rights of illegitimate children to the succession of property are defined in cap. iv. of book iii. of the Code Civil, under the head "*Des Successions Irrégulières.*" If the father or mother has legitimate descendants, the share of an illegitimate child is one-third of the hereditary portion which it would have received had it been legitimated; one-half when there are no legitimate descendants, but only brothers or sisters or ascending relations; and three-fourths when the father or mother has neither descendants nor ascending relations, nor brothers or sisters; and an illegitimate child is entitled to inherit the whole of the property of his parents when they have no relations in a certain order of succession. The descendants of an illegitimate person deceased can claim on his behalf. The property of an illegitimate person dying without children goes to his parents, wholly to the one who recognised him by a legal act, or if both parents joined in this act, in equal parts to each

and if they are dead, the property passes to their legitimate children or to the illegitimate brothers and sisters of the testator, according to circumstances. There are various other regulations on this subject in the French Codes; but the above will be sufficient to indicate the spirit of this department of French jurisprudence.

In *Norway* the state of the law is very favourable to illegitimate children. They are not only legitimated by the subsequent marriage of the parents, but the father may, previous to his contracting a marriage with any other party, declare the legitimacy of his children by a particular act, which gives them the same rights as his children born in wedlock. This declaration of legitimacy is generally made in Norway. (Laing's *Norway*.)

In several of the *States of the North American Union* ante-nuptial children are legitimated by the father's marriage to the mother. This is the case in the states of Vermont, Maryland, Virginia, Georgia, Alabama, Mississippi, Louisiana, Kentucky, Missouri, Indiana, Illinois, and Ohio. Kent states (*Commentaries*, vol. ii. p. 212, ed. 1840) that "bastards are incapable of taking, in New York, under the law of descents and under the statute of distribution of intestate's effects: and they are equally incapable in several of the other United States, which follow in this respect the rule of the English law. But in Vermont, Connecticut, Virginia, Kentucky, Ohio, Indiana, Missouri, Illinois, Tennessee, North Carolina, and Georgia, bastards can inherit from and transmit to their mothers real and personal estate, under some modifications, which prevail particularly in the states of Connecticut, Illinois, North Carolina, and Tennessee; and in New York the estate of an illegitimate intestate descends to the mother and the relatives on the part of the mother. In North Carolina the legislature, in 1829, enabled bastards to be legitimated on the intermarriage of the putative father with the mother, and on his petition, so far as to enable the child to inherit the real and personal estate of his father as if he was lawfully born. In Louisiana bastards (being defined to be children whose father is unknown) have

no right of inheritance to the estates of their natural father or mother. But other natural or illegitimate children succeed to the estate of the mother in default of lawful children or descendants, and to the estate of the father who has acknowledged them, if he dies without legal or collateral relations, or without a surviving wife."

By the *Athenian law* (passed in the archonship of Eucleides, B.C. 403), as quoted by Demosthenes (*Against Macartatus*, cap. 12), illegitimate children were cut out from all inheritance and succession; nor could a man who had legitimate male offspring leave his property to other persons, and consequently not to his illegitimate children. A previous law of Pericles (*Life* by Plutarch, cap. 37) declared that those only were legitimate and Athenian citizens who were born of two Athenian parents. This law, which was repealed or violated in favour of a son of Pericles, was re-enacted in the archonship of Eucleides. (Athenæus, xiii. 577; Demosthenes *Against Eubulides*, cap 10.)

Among the *Romans*, if a man begot children in lawful matrimony (justæ nuptiæ), those children were his, and according to the phraseology of the Roman law, they were said to be in his power. If he begot children on a woman in any other way, they were not in his power; he had not the paternal authority over them, and they had not the rights of children begotten in lawful matrimony. If a man contracted what the Romans called an incestuous marriage, such as the alliance of father and daughter, mother and son, grandfather and granddaughter; as this was really no marriage, the woman was not the man's wife, and the offspring were not his children. But though there was no father, the offspring were considered the children of the mother, for there could generally be no doubt that they were the fruit of her body; accordingly such children had a mother, but they had no father. This was also the condition of children whom a woman brought forth from promiscuous intercourse; they were considered to have no father, because the father was uncertain: they were called *Spurii*, which is the common Roman

term for persons who had no legal father. The reasons why they were called *Spurii*, as assigned by the Roman Jurists, are not satisfactory. (Gaius, i. 64.) Adulterine children, children begotten in an adulterous connection, had of course no father. If we closely follow the principle of Roman law contained in the expression that those children are in a man's power, and those only, whom he has begotten in lawful marriage, no person, according to strict Roman law, had a father unless he was begotten in lawful matrimony. If a child was begotten in lawful matrimony, and the woman was divorced from her husband during pregnancy, the husband was the father, whether the woman remained single or married again during pregnancy. This was the case of Tiberius Nero, whose wife Livia was with child when she married Cæsar Octavianus: the child was Drusus, the brother of Tiberius, who was legally the child of his real father, and was afterwards adopted by Cæsar. Under the old Roman law, it does not appear that a person begotten out of lawful matrimony could be legitimated. As children not begotten in lawful marriage had no father, they could have no kinsmen on the (reputed) father's side, no *Agnati*. They could also have no cognati, for cognatio implied a legal marriage. If, then, a *spurius* died intestate, no person could claim his property as an *adgnatus* or *cognatus*, for there could be neither cognatio nor agnatio where there was no father; but in respect of proximity, his mother, or his brother by the same mother, could claim the *Bonorum possessio* by virtue of the Edict, *Unde Cognati* (Ulpian, *Dig.* 38, tit. 4). This instance proves that the *spurius* was considered the son of his mother, at least for certain purposes; but the origin of this rule of Edictal Law may not have belonged to a very early period. It is stated by some modern writers on Roman law, that with respect to the mother, there was no difference between children conceived in lawful marriage and children that were not.

The English maxim that a bastard is *nullius filius* is not so good as that of the Roman law, which considers him to be the

son of his mother, as indeed the English law does for some purposes and yet not for others. In a case in Lord Raymond's 'Reports,' p. 65, there are some remarks on the maxim of a bastard being *nullius filius*, and they form a good example of the absurdity of the maxim. The English law also, though it calls a bastard *nullius filius*, admits him to be the son of his putative father for some purposes and not for others.

The expression natural children, *naturales filii*, is borrowed from the Roman law. In the later Roman law *naturales filii* are described as the offspring of a concubine, or of a maid or widow whom a man has debauched. But the older sense of *naturalis filius*, *naturalis pater*, was that of natural son, natural father, as opposed to a son or father by adoption, as we see in Cicero and in Livy (xlii. 52; xliv. 4). The word is also used in the same sense in Gaius (i. 104), and by Ulpian (*Dig.* 37, tit. 8, s. 1, § 2). The context will show in any case whether it is the object of the writer to contrast natural-born children with adopted, or illegitimate children with legitimate.

Children who were the sons of a concubine, or of a woman whom a man had seduced, were apparently called *naturales* because they were known to be the children of a man's body, and not adopted children, nor yet children begotten of promiscuous intercourse.

As already observed, the mother of a child may generally be ascertained, but the father cannot be certainly known, even when the woman is a married woman. However, it was a rule of Roman law that the husband must be presumed to be the father of his wife's child (*Dig.* 2, tit. 4, s. 5). This was only a legal presumption, and not an absolute rule. In certain cases the law provided precautions against a child being passed off as the husband's, when it was not his child. If a woman on the death of her husband declared that she was pregnant by him, those who were interested in the property in case the husband left no child, might apply to the Prætor for an order *De Ventre Inspeciundo*, the object of which was to ascertain the fact of pregnancy, and to secure the woman so that no fraud should be prac-



tised by her as to the birth of a child (*Dig.* 25, tit. 4). In case of divorce, the same process might also be used when the wife declared herself pregnant, and the husband would not admit the fact.

The word "legitimate" (*legitimum*) in Latin means anything that is consistent with Law, whether it be customary law or positive enactment. A child begotten between two persons who were not in the relation of husband and wife, as a Roman citizen and a slave for instance, was said to be conceived illegitimately (*illegitime concipi*); and the status of such persons was determined by the status of the mother at the time of the birth. Accordingly, if the mother was a slave at the time of conception, but had been made free before the birth, the child was free. The status of children who were begotten according to law (*legitime*), was determined by the status of the mother at the time of the conception (*Gaius*, i. 89). The Roman terms legitimate and illegitimate in the earlier law, as applied to children, therefore did not correspond to our use of the terms. To take an instance from *Gaius*: if a Roman woman, a citizen, was pregnant, and in that state was subjected to the interdict of fire and water, by which she lost her citizenship and was reduced to the condition of an alien (*peregrina*), it was the general opinion that if the child was begotten in lawful marriage it was a Roman citizen; if it was begotten from promiscuous intercourse, it was an alien. All this shows that though those children only who were begotten in a legal Roman marriage were in the father's power and had the full rights of Roman citizens, all children otherwise begotten did not correspond to our bastards; they might be slaves, or peregrini, or naturales, or spurii. In the instance just given from *Gaius*, it appears that a child born of a woman who was a Roman citizen, but not begotten in lawful marriage, was *spurius*: a child so born of a woman who was not a Roman citizen was *Peregrinus*. The Roman law did not concern itself about the status of legitimacy or illegitimacy, in our sense, of those who were not the children of Roman citizens; such children were either *Peregrini* (aliens) or *servi* (slaves), as appears by another instance from

*Gaius* (i. 91). This other instance is as follows:—Pursuant to a *Senatusconsultum* passed in the time of the Emperor *Claudius*, a woman, who was a Roman citizen, and cohabited with another man's slave, against the will of the owner, and contrary to notice from him, might be reduced to a servile condition. If a woman in a state of pregnancy was reduced to a servile condition on account of such cohabitation, the child that was born was a Roman citizen in case the woman conceived in lawful marriage, that is, if she was a married woman; if the pregnancy was the result of promiscuous intercourse, the child was a slave.

The old rule of Roman law that a *Spurius* (offspring of promiscuous intercourse) could not be made a legitimate son, appears to have been always maintained. The *Spurius* took the gentile name of his mother. It is mentioned by *Suetonius* (*Julius Cæsar*, c. 52) as an unusual thing, that *Cæsar* allowed his son by *Cleopatra* to be called by his name. The son, however, was not *Spurius*; he was *Peregrinus*. In the fourth century the practice of legitimization was introduced by *Constantine the Great* in favour of naturales, or men's children by concubines. The constitution of *Constantine* is only known as quoted in a constitution of *Zeno* (*Code*, v. tit. 27, § 5), which declared that it renewed the constitution of the *Divus Constantinus*, and enacted that those who, at the time of this constitution being published, were living with free women as concubines, and had begotten children of them, and had no wife and no legitimate children, might render all their children legitimate by marrying their concubines, and such children were to be on the same footing as after-born children of the marriage. But the benefit of the law did not extend to any children by concubines who should be born after the date of the constitution. The object of the law was to induce those who were then living in concubinage to marry, but not to allow any favour to such alliances in future. The Emperor *Theodosius the Younger* introduced a form of legitimating naturales, which was called *Per Oblationem Curiae*, which it is not necessary to describe particularly.

Justinian, after various legislative measures, finally established legitimation by subsequent marriage in all cases of naturales, and placed the children who were born before the marriage, and those who might be born after, on the same footing. Anastasius established the mode of legitimation by Adrogation. Naturales, as they were sui juris, could be adopted by the form of adrogation, pursuant to a constitution of Anastasius. There seems to be no reason why this could not have been done according to the old Roman law; but there is probably no evidence that it was done. This constitution of Anastasius was repealed by Justin. Justinian established the practice of legitimation by imperial rescript, and by testament. A constitution of Justinian enacts (*Code*, vi. tit. 57, § 5) that if any woman of rank (*illustris mulier*) had a son born in matrimony and a bastard (*spurius*) also, she could give nothing to the bastard, either by testament or gift, nor could he take the property *ab intestato*, so long as there were lawful children living. The constitution was published in order to settle a doubt as to the rights of *spurii*. But the children which a concubine who was a free woman had by the commerce of concubinage with a free man, could succeed to the mother's property on the same footing as her legitimate children, if she had any.

It is important to form a right conception of the difference between children not begotten or born in lawful marriage, in the respective systems of English and Roman law. Paternity, in the Roman law, could only be obtained on the condition of begetting a child in lawful marriage. If this condition was not fulfilled, the male had no claim on the child who might be born from this connection with the mother; nor had the child or the mother any claim upon him in respect of maintenance. The child was the fruit of the mother, and it belonged to her in all cases, except when the father could claim it as the offspring of a legal marriage. The spurious child was a member of the mother's family. No child could be in the power of a mother; and her child therefore would either be sui juris if she were so, or if she were in the power of her father, the child

would be his grandson and in his power. This seems to be a strict consequence of the principles that have been here laid down as to the condition of *spurii*. The simplicity of the Roman system in this respect forms a striking contrast with the rules of English law as to children not born in lawful marriage. The Roman law declared that a *spurius* had a mother and no father, and it followed out this position to its strict consequence. The English law declares that a bastard is nobody's child, a position which it does not follow out to its consequences, simply because a doctrine so manifestly false never could be fully applied to practice.

This doctrine of a bastard being *nullius filius* was apparently simply intended and adapted to deprive bastards of all capacity to inherit as heirs or next of kin, and consequently to favour escheat; and also to prevent any persons claiming as heirs or next of kin to them, in case of intestacy. Under the old law, and before the passing of the Statute of Wills, it must often have happened that the lands of bastards would escheat. The new rules of law as to bastardy at the present day have been solely framed with reference to the Poor Laws, for the purpose of saving the public, that is, the parish, from the charge of maintaining a bastard child. It is with this object that rules of law have been framed for ascertaining who has begotten the child and must contribute to its support; and for the purpose of settling the disputes between parishes as to the liability to maintain the child, it has been determined that for the purpose of settlement a bastard shall be considered his mother's child. But the old rules of law as to the incapacities of bastards still subsist, and according to these rules, a bastard has neither father, mother, sister or brother, or other remoter kin. His only kin are the children whom he begets in lawful wedlock. An English bastard is therefore the founder of a new stock, the creator of a family whose pedigree can never be traced beyond him; a distinction which other people cannot have.

The Roman Law required children to be begotten in matrimony in order to be lawful children. The English law does not concern itself as to the conception,

but only as to the birth, which must be in wedlock. The Roman law required that when a man obtained possession of a woman's person, he must do it with a matrimonial mind: the English Law cares not with what mind he obtains possession of the woman; it is altogether indifferent about the origin of the connection. The old system combines, with a clear practical rule for determining the father, the condition of a marriage, an elevated notion of the dignity of the marriage connection. The modern system simply lays down a rule for determining paternity, subject to which it is regardless as to the freedom of ante-nuptial sexual connection.

BATH, KNIGHTS OF THE, so called from the ancient custom of bathing previous to their installation. Camden and Selden agree that the first mention of an order of knights, distinctly called Knights of the Bath, is at the coronation of Henry IV. in 1399, and there can be little doubt that this order was then instituted. That bathing had been a part of the discipline submitted to by esquires in order to obtain the honour of knighthood from very early times, is admitted; but it does not appear that any knights were called Knights of the Bath till these were created by King Henry IV.

It became subsequently the practice of the English kings to create Knights of the Bath previous to their coronation, at the inauguration of a Prince of Wales, at the celebration of their own nuptials or those of any of the royal family, and occasionally upon other great occasions or solemnities. Fabyan (*Chron.* edit. 1811, p. 582) says that Henry V., in 1416, upon the taking of the town of Caën, dubbed sixteen Knights of the Bath.

Sixty-eight Knights of the Bath were made at the coronation of King Charles II. (see the list in Guillim's *Heraldry*, fol. Lond. 1679, p. 107); but from that time the order was discontinued, till it was revived by King George I. under writ of Privy Seal, dated May 18, 1725, during the administration of Sir Robert Walpole. The statutes and ordinances of the order bear date May 23, 1725. By these it was directed that the order should con-

sist of a grand-master and thirty-six companions, a succession of whom was to be regularly continued. The officers appropriated to the order, besides the grand-master, were a dean, a registrar, king of arms, genealogist, secretary, usher, and messenger. The dean of the collegiate church of St. Peter, Westminster, for the time being, was appointed ex officio dean of the Order of the Bath, and it was directed that the other officers should be from time to time appointed by the grand-master.

The badge of the order was directed to be a rose, thistle, and shamrock, issuing from a sceptre between three imperial crowns, surrounded by the motto *Tria juncta in uno*; to be of pure gold, chased and pierced, and to be worn by the knight elect, pendent from a red riband placed obliquely over the right shoulder. The collar to be of gold, weighing thirty ounces troy weight, and composed of nine imperial crowns, and eight roses, thistles, and shamrocks issuing from a sceptre, enamelled in their proper colours, tied or linked together by seventeen gold knots, enamelled white, and having the badge of the order pendent from it. The star to consist of three imperial crowns of gold, surrounded with the motto of the order upon a circle gules, with a glory or ray issuing from the centre, to be embroidered on the left side of the upper garment.

The installation dress was ordered to be a surcoat of white satin, a mantle of crimson satin lined with white, tied at the neck with a cordon of crimson silk and gold, with gold tassels, and the star of the order embroidered on the left shoulder; a white silk hat, adorned with a standing plume of white ostrich feathers; white leather boots edged and heeled; spurs of crimson and gold; and a sword in a white leather scabbard, with cross hilts of gold.

Each knight was to be allowed three esquires, who are to be gentlemen of blood, bearing coat-armour; and who, during the term of their several lives, are entitled to all the privileges and exemptions enjoyed by the esquires of the king's body or the gentlemen of the privy chamber.

In 1815, the Prince Regent being de-

sirous to commemorate the auspicious termination of the long war in which the empire had been engaged, and of marking his sense of the courage and devotion manifested by the officers of the king's forces by sea and land, ordained that thenceforward the order should be composed of three classes, differing in their ranks and degrees of dignity.

The First class to consist of knights grand crosses, which designation was to be substituted for that of knights companions previously used. The knights grand crosses, with the exception of princes of the blood-royal holding high commissions in the army and navy, not to exceed seventy-two in number; whereof a number not exceeding twelve might be nominated in consideration of services rendered in civil or diplomatic employments. To distinguish the military and naval officers upon whom the first class of the said order was then newly conferred, it was directed that they should bear upon the ensign or star, and likewise upon the badge of the order, the addition of a wreath of laurel, encircling the motto, and issuing from an escrol inscribed *Ich dien*; and the dignity of the first class to be at no time conferred upon persons who had not attained the rank of major-general in the army or rear-admiral in the navy.

The Second class was to be composed of knights commanders, who were to have precedence of all knights bachelors of the United Kingdom; the number, in the first instance, not to exceed one hundred and eighty, exclusive of foreign officers holding British commissions, of whom a number not exceeding ten may be admitted into the second class as honorary knights commanders; but in the event of actions of signal distinction, or of future wars, the number of knights commanders may be increased. No person to be eligible as a knight commander who does not, at the time of his nomination, hold a commission in his Majesty's army or navy; such commission not being below the rank of lieutenant-colonel in the army or of post-captain in the navy. By a subsequent regulation in 1815, no person is now eligible to the class of K.C.B. unless he has attained the rank of major-general in the army or rear-admiral in

the navy. Each knight commander to wear his appropriate badge or cognizance, pendent by red riband round the neck, and his appropriate star embroidered on the left side of his upper vestment. For the greater honour of this class, it was further ordained that no officer of his Majesty's army or navy was thenceforward to be nominated to the dignity of a knight grand cross who had not been appointed previously a knight commander of the order.

The Third class to be composed of officers holding commissions in his Majesty's service by sea or land, who shall be styled companions of the said order; not to be entitled to the appellation, style, or precedence of knights bachelors, but to take precedence and place of all esquires of the United Kingdom. No officer to be nominated a companion of the order unless he shall previously have received a medal or other badge of honour, or shall have been specially mentioned by name in despatches published in the *London Gazette* as having distinguished himself.

The bulletin announcing the re-modeling of the Order of the Bath was dated Whitehall, January 2, 1815.

By another bulletin, dated Whitehall, January 6, 1815, the Prince Regent, acting in the name and on behalf of his Majesty, having taken into consideration the eminent services which had been rendered to the empire by the officers in the service of the Honourable East India Company, ordained that fifteen of the most distinguished officers of that service, holding commissions from his Majesty not below that of lieutenant-colonel, might be raised to the dignity of knights commanders of the Bath, exclusive of the number of knights commanders belonging to his Majesty's forces by sea and land who had, been nominated by the ordinance of January 2. In the event of future wars, and of actions of signal distinction, the said number of fifteen to be increased. His Royal Highness further ordained that certain other officers of the same service, holding his Majesty's commission, might be appointed companions of the order of the Bath, in consideration of eminent services rendered in action

with the enemy; and that the said officers should enjoy all the rights, privileges and immunities secured to the Third class of the said order. (*Observations Introductory to an Historical Essay upon the Knighthood of the Bath*, by John Anstis, Esq. 4to. Lond. 1725; Selden's *Titles of Honour*, fol. Lond. 1672, pp. 678, 679; Camden's *Britannia*, fol. Lond. 1637, p. 172; Sandford's *Genealog. Hist.* fol. 1797, pp. 267, 431, 501, 562, 578; J. C. Dithmari, *Commentatio de Honoratissimo Ordine de Balneo*, fol. Franc. ad Viad. 1729; Mrs. S. S. Banks's *Collections on the Order of the Bath*, MSS. Brit. Mus.; *Statutes of the Order of the Bath*, 4to. Lond. 1725, repr. with additions in 1812; *Bulletins of the Campaign of 1815*, pp. 1-18.)

#### BATHS AND WASHHOUSES.

The establishment of these places for the general convenience of the public, forms a novelty in domestic legislation, and evinces a regard to the health and comfort of the poorer classes of the community creditable to the age in which we live. Buried in the depths of the metropolis and the large provincial towns, numerous classes existed to whom the facilities for either bathing or washing were next to unattainable, and by which they became liable to destructive and enfeebling diseases, as well as precluded from the needful appliances to cleanliness, cheerfulness and salubrity. But the establishment of Public Baths and Washhouses places the means of detergency within everybody's reach; and we are glad to remark that both in London and some of the large towns, the laudable intentions of the legislature have been promptly acted upon.

The first act to encourage the establishment of Public Baths and Washhouses in England was passed in 1846, and is the 9 & 10 Vict. c. 74. By the first clause it is declared that "it is desirable for the health, comfort, and welfare of the inhabitants of towns and populous districts to encourage the establishment therein of public baths and washhouses and open bathing places," and then proceeds to enact in several clauses, that all incorporated boroughs by their councils, and any parish by its

vestry, or more than one parish jointly if they concur by their vestries, may establish such baths and washhouses. In parishes, on a requisition signed by ten rate-payers, a vestry is to be convened, but no resolution in favour of them to be deemed to be carried unless two-thirds vote for it, and a copy of the resolution is to be forwarded to the Secretary of State for the Home Department. Commissioners are to be appointed, who are to appoint the officers and keep the accounts, which are to be open to the inspection of the rate-payers and others, under a penalty of 5*l.* for refusal.

The expenses of carrying the Act into execution are to be paid out of, and levied as part of, the poor-rate, and if any surplus income should arise, it is to be paid over to the proper persons in relief of the poor-rate. In order to erect the necessary buildings, money may be borrowed by councils or vestries of the Public Works Loan Commissioners, upon security of the borough-fund or on the poor-rate, and with the consent of the Treasury. Land belonging to a borough or parish may be appropriated for sites, or such sites may be purchased, or existing baths and washhouses may be purchased. The trustees and commissioners of gas-works, water-works, canals, &c., may, in their discretion, grant and furnish supplies of water and gas for such public baths and washhouses and open bathing places, either without charge, or on such favourable terms as they shall think fit. If, after having been established seven years, any such baths and washhouses shall be found too expensive, they may be then sold, and the proceeds carried to the borough-fund or the poor-rate, as the case may be. The borough council and the parish commissioners are empowered to make bye-laws for regulating the use of the baths and washhouses, and the charges, but in conformity with the schedule afterwards given, and they must be approved by the Secretary of State; a copy of such bye-laws to be hung up in every bath-room, washhouse, &c. "The number of baths for the labouring classes in any building or buildings under the management of the same council or commissioners, shall

not be less than twice the number of baths of any higher class if but one, or of all the baths of any higher class if more than one, in the same building or buildings." The charge also for the use of washing-tubs is not to be higher than are stated in the schedule, except when used for more than two hours, when the council or commissioners may fix such sum as they deem reasonable. The officers are empowered to detain clothes in cases of non-payment, and if the charge is not paid within seven days, the same may be sold, and the surplus above the expenses to be paid on demand to the owner. The officers and servants are forbidden to take fees; and any member of the council or commissioners accepting any fee or reward, on account of anything done or ordered to be done in pursuance of this act, or holding any office under the provisions of this act, or being parties to any bargain or contract in connection therewith, is rendered incapable of ever serving or being employed under this act, and also forfeit 50*l*.

*Bye Laws to be made in all cases.* — For securing that the baths and washhouses and open bathing places shall be under the due management and control of the officers, servants, or others appointed or employed in that behalf by the council or commissioners.

For securing adequate privacy to persons using the baths and washhouses and open bathing places, and security against accidents to persons using the open bathing places.

For securing that men and boys above eight years old shall bathe separately from women and girls and children under eight years old.

For preventing damage, disturbance, interruption, and indecent and offensive language and behaviour and nuisances.

For determining the duties of the officers, servants, and others appointed by the council or commissioners.

By a subsequent statute, the 10 & 11 Vict. c. 61, some technical legal difficulties in the Act of the preceding year were removed, and in place of the first schedule of charges, the following substituted:

*Charges for the Baths, Washhouses, and Bathing Places.*

1. *Baths for the Labouring Classes.*—Every bath to be supplied with clean water for every person bathing alone, or for several children bathing together, and in either case with one clean towel for every bather.

For one person above eight years of age:

Cold bath, or cold shower bath, any sum not exceeding 1*d*.

Warm bath, or warm shower bath, or vapour bath, any sum not exceeding 2*d*.

For several children, not above eight years of age, nor exceeding four, bathing together:

Cold bath, or cold shower bath, any sum not exceeding 3*d*.

Warm bath, or warm shower bath, or vapour bath, any sum not exceeding 4*d*.

2. *Baths of any higher Class.*—Such charges as the council and the commissioners respectively think fit, not exceeding in any case three times the charges above mentioned for the several kinds of baths for the labouring classes.

3. *Washhouses for the Labouring Classes.*—Every washhouse to be supplied with conveniences for washing and drying clothes and other articles.

For the use by one person of one washing tub or trough, and of a copper or boiler (if any), or, where one of the washing tubs or troughs shall be used as a copper or boiler, for the use of one pair of washing tubs or troughs, and for the use of the conveniences for drying:

For one hour only in any one day, any sum not exceeding 1*d*.

For two hours together, in any one day, any sum not exceeding 3*d*.

Any time over the hour or two hours respectively, if not exceeding five minutes, not to be reckoned. For two hours not together, or for more than two hours in any one day, such charges as the council and the commissioners respectively think fit. For the use of the washing conveniences alone, or of the drying conveniences alone, such charges as the council and the commissioners respectively think fit, but not

exceeding in either case the charges for the use for the same time of both the washing and drying conveniences.

4. *Washhouses of any higher class.*—Such charges as the council and commissioners think fit.

5. *Open Bathing Places*, where several persons bathe in the same water, for one person, 0½d.

By another Act (1846), 9th and 10th Vict. c. 87, these useful sanitary measures were extended to Ireland, and town-councils or commissioners of any city or town incorporated under 3 and 4 Vict. c. 103, were empowered to adopt them. Money might be borrowed, and agreements made for the supply of gas and warm water. Schedule of charges similar to the above.

**BAWDY-HOUSES.** [PROSTITUTION.]

**BEACON**, a sign ordinarily raised upon some foreland or high ground as a sea-mark. It is also used for the fire-signal which was formerly set up to alarm the country upon the approach of a foreign enemy. The word is derived from the Anglo-Saxon *beacen* or *beacn*, a sign or signal. *Beac* or *bec* is the real root, which we still have in *beck*, *becon*.

Fires by night, as signals, to convey the notice of danger to distant places with the greatest expedition, have been used in many countries. They are mentioned in the prophecies of Jeremiah, who (chap. vi. ver. 1) says, "Set up a sign of fire in Beth-haccerem, for evil appeareth out of the north, and great destruction." In the treatise *De Mundo*, attributed to Aristotle, it is said (edit. 12mo. Glasg. 1745, p. 35) that fire-signals were so disposed on watch-towers through the king of Persia's dominions, that within the space of a day he could receive intelligence of any disturbances in the most distant part of his dominions; but this is evidently an exaggerated statement. Æschylus, in his play of the Agamemnon, represents the intelligence of the capture of Troy as conveyed to the Peloponnesus by fire-beacons. During the Peloponnesian war we find fire-beacons (*φυκτοί*) employed. (Thucyd. iii. 22.) Pliny distinguishes this sort of signal from the Phari, or light-houses placed upon the coasts for the direction of ships, by the name of "Ignes prænun-

tiativi," notice-giving fires. (Plin. *Hist. Nat.* edit. Harduin, ii. 73.)

Lord Coke, in his Fourth Institute, chap. xxv., speaking of our own beacons, says, "Before the reign of Edward III. they were but stacks of wood set up on high places, which were fired when the coming of enemies was descried; but in his reign pitch-boxes, as now they be, were, instead of those stacks, set up: and this properly is a beacon." These beacons had watches regularly kept at them, and horsemen called hobbelaers were stationed by most of them to give notice in day-time of an enemy's approach, when the fire would not be seen. (Camden, *Brit. in Hampshire*, edit. 1789, vol. i. p. 173.)

Stow, in his *Annals*, under the year 1326, mentions among the precautions which Edward II. took when preparing against the return of the queen and Mortimer to England, that "he ordained bikenings or beacons to be set up, that the same being fired might be seen far off, and thereby the people to be raised."

The Cottonian MS. in the British Museum, Augustus I. vol. i. art. 31, preserves a plan of the harbours of Poole, Purbeck, &c., followed, art. 33, by a chart of the coast of Dorsetshire from Lyme to Weymouth, both exhibiting the beacons which were erected on the Dorsetshire coast against the Spanish invasion in 1588. Art. 58 preserves a similar chart of the coast of Suffolk from Orwell Haven to Gorleston near Yarmouth, with the several forts and beacons erected on that coast.

The power of erecting beacons was originally in the king, and was usually delegated to the Lord High Admiral. In the eighth of Elizabeth an act passed touching sea-marks and mariners (chap. 13), by which the corporation of the Trinity House of Deptford Strond were empowered to erect beacons and sea-marks on the shores, forelands, &c. of the country according to their discretion, and to continue and renew the same at the cost of the corporation. [TRINITY HOUSE.]

Professor Ward, in his 'Observations on the Antiquity and Use of Beacons in England' (*Archæologia*, vol. i. p. 4), says, the money due or payable for the maintenance of beacons was called *Beconagium*,

and was levied by the sheriff of the county upon each hundred, as appears by an ordinance in manuscript for the county of Norfolk, issued to Robert de Monte and Thomas de Bardolfe, who sat in parliament as barons, 14th Edward II.

The manner of watching the beacons, particularly upon the coast, in the time of Queen Elizabeth, may be gathered from the instructions of two contemporary manuscripts printed in the *Archæologia*, col. viii. pp. 100, 183. The surprise of those by the sea-side was usually a matter of policy with an invading enemy, to prevent the alarm of an arrival from being spread.

An iron beacon or fire-pot may still be seen standing upon the tower of Hadley Church in Middlesex. Gough, in his edition of Camden, fol. 1789, vol. iii. p. 281, says, at Ingleborough, in Yorkshire, on the west edge, are remains of a beacon, ascended to by a flight of steps, and ruins of a watch-house. Collinson, in his *History of Somersetshire*, 4to. 1791, vol. ii. p. 5, describes the fire-hearths of four large beacons as remaining in his time upon a hill called Dunkery Beacon in that county. He also mentions the remains of a watch-house for a beacon at Dundry (vol. ii. p. 105). Beacon-hills occur in some part or other of most counties of England which have elevated ground. The Herefordshire beacon is well known. Gough, in his additions to Camden, ut supr. vol. i. p. 394, mentions a beacon hill at Harescombe in Gloucestershire, inclosed by a transverse vallation fifty feet deep. Salmon, in his *History of Hertfordshire*, p. 349, says, at Therfield, on a hill west of the church, stood one of the four beacons of this county.

BEADLE, the messenger or apparitor of a court, who cites persons to appear to what is alleged against them. It is probably in this sense that we are to understand the *bedelli*, or under-bailiffs of manors, mentioned in several parts of the *Domesday Survey*. Spelman, Somner, and Watts all agree in the derivation of beadle from the Saxon *byðel*, a crier, and that from *bið*, to publish, as in bidding the banns of matrimony. The *bedelli* of manors probably acted as criers in the lord's court. The beadle of a forest,

as Lord Coke informs us in his Fourth Institute, was an officer who not only warned the forest courts and executed process, but made all proclamations.

It appears from the Reports of the Commissioners of Corporation Inquiry (1835), that inferior officers, called Beadles, were appointed in forty-four boroughs out of upwards of two hundred visited by the commissioners.

Bishop Kennett, in the Glossary to his *Parochial Antiquities of Oxfordshire*, says that rural deans had formerly their beadles to cite the clergy and church officers to visitations and execute the orders of the court Christian. Parochial and church beadles were probably in their origin persons of this description, though now employed in more menial services.

Bedel, or Beadle, is also the name of an officer in the English universities, who in processions, &c. precedes the chancellor or vice-chancellor, bearing a mace. In Oxford there are three esquire and three yeomen bedels, each attached to the respective faculties of divinity, medicine and arts, and law. In Cambridge there are three esquire bedels and one yeoman bedel. The esquire bedels in the university of Cambridge, beside attending the vice-chancellor on public solemnities, attend also the professors and respondents, collects fines and penalties, and summon to the chancellor's court all members of the senate. (*Ducange's Gloss.* in voce *Bedellus*; Kennet, *Paroch. Antiq.* vol. ii. Gloss.; *Gen. Introd. to Domesday Book*, 8vo. edit. vol. i. p. 247; *Camb. and Oxf. Univ. Calendars*.)

BED OF JUSTICE. This expression (*lit de justice*) literally denoted the seat or throne upon which the king of France was accustomed to sit when personally present in parliaments, and from this original meaning the expression came, in course of time, to signify the parliament itself. Under the ancient monarchy of France, a Bed of Justice denoted a solemn session of the king in the parliament, for the purpose of registering or promulgating edicts or ordinances. According to the principle of the old French constitution, the authority of the parliament, being derived entirely from the crown, ceased when the king was present; and



consequently all ordinances enrolled at a bed of justice were acts of the royal will, and of more authenticity and effect than decisions of parliament. The ceremony of holding a bed of justice was as follows:—The king was seated on the throne, and covered; the princes of the blood-royal, the peers, and all the several chambers were present. The marshals of France, the chancellor, and the other great officers of state stood near the throne, around the king. The chancellor, or in his absence the keeper of the seals, declared the object of the session, and the persons present then deliberated upon it. The chancellor then collected the opinions of the assembly, proceeding in the order of their rank; and afterwards declared the determination of the king in the following words: “*Le roi, en son lit de justice, à ordonné et ordonne qu’il sera procédé à l’enregistrement des lettres sur lesquelles on a délibéré.*” The last bed of justice was assembled by Louis XVI. at Versailles, on the 6th of August, 1788, at the commencement of the French revolution, and was intended to enforce upon the parliament of Paris the adoption of the obnoxious taxes, which had been previously proposed by Calonne at the Assembly of Notables. The resistance to this measure led to the assembly of the States-General, and ultimately to the Revolution.

**BEDCHAMBER, LORDS OF THE,** are officers of the royal household under the groom of the stole. The number of lords, in the reign of William IV., was twelve, who waited a week each in turn. The groom of the stole does not take his turn of duty, but attends his majesty on all state occasions. There were thirteen grooms of the bedchamber who waited likewise in turn. The salary of the groom of the stole was 2000*l.* per annum, of the lords 1000*l.* each, and of the grooms 500*l.*

The salaries of all officers of the royal household are paid out of a fund appropriated for this purpose in the Civil List, and which is fixed by 1 Vict. c. 2, at 131,260*l.* per annum.

Chamberlayne, in his ‘*Present State of England*,’ 12mo. 1669, p 249, calls them gentlemen of the bedchamber. “The gentlemen of the Bedchamber,” he says,

“consist usually of the prime nobility of England. Their office in general is, each one in his turn, to wait a week in every quarter in the king’s bedchamber, there to lie by the king on a pallet-bed all night, and in the absence of the groom of the stole to supply his place.” In the edition of the same work published in 1716, he adds, “Moreover, they wait upon the king when he eats in private; for then the cup-bearers, carvers, and sewers do not wait. This high office, in the reign of a queen, as in her late majesty’s, is performed by ladies, as also that of the grooms of the bedchamber, who were called bedchamber women, and were five in number.” At present there are in the queen’s household, taking their turns of periodical duty, seven ladies of the bedchamber and eight bedchamber women. There are also a principal lady of the bedchamber and an extra lady of the bedchamber. Both the ladies of the bedchamber and the bedchamber women are allied to the nobility. In the household of the prince consort there are two lords of the bedchamber.

The title of lords of the bedchamber appears to have been adopted after the accession of the House of Hanover. They are first mentioned by that title in Chamberlayne’s ‘*State of England*’ for 1718.

The question whether the ladies of the bedchamber should be regarded as political offices in the hands of the minister, or whether the appointment should depend upon the personal favour of the queen, formed an important feature in the ministerial crisis which took place in May, 1839. The government of Lord Melbourne had been defeated, and Sir Robert Peel was sent for by the Queen to form a new administration, and on proposing to consult her majesty on the subject of the principal appointments held by ladies in the royal household, her Majesty informed him that it was her pleasure to reserve those appointments, conceiving the interference of the minister “to be contrary to usage,” while she added it was certainly “repugnant to her feelings.” Sir R. Peel being thus denied the advantage of a public demonstration of her Majesty’s “full support and confidence,” resigned the task of

forming a cabinet, and the former ministers were sent for, when they held a council and came to the following resolution, which is likely to settle the question on future occasions: "That for the purpose of giving to the administration that character of efficiency and stability and those marks of the constitutional support of the crown which are required to enable it to act usefully to the public service, it is reasonable that the great officers of the court, and situations in the household held by members of parliament, should be included in the political arrangements made in a change of the administration: but they (the ex-ministers) are not of opinion that a similar principle should be applied or extended to the offices held by ladies in her Majesty's household." The defeated ministry was then reinstated.

**BED-HOUSE**, a term used for an alms-house. Hence, *bedes-man*, or *beadsman*, a person who resides in a *bed-house*, or is supported from the funds appropriated for this purpose. The master of St. Katherine's Hospital, London, in the Regent's Park, has the right of appointing a number of non-resident pensioners on that foundation, who are termed *bedesmen* and *bedeswomen*. In the recently abolished Court of Exchequer in Scotland, the term *bedesman*, *beadman*, or *beidman*, was used to denote that class of paupers who enjoy the royal bounty. *Bede* is the Anglo-Saxon word for prayer, and as almsmen were bound to pray for the founder of the charity, they were hence called *beadsmen*. Sir Walter Scott describes the king's *beadsmen* as an order of paupers to whom the kings of Scotland were in the custom of distributing a certain alms, in conformity with the ordinance of the Roman Catholic church, and who were expected, in return, to pray for the royal welfare and that of the state.

**BEGGAR.** [MENDICITY.]

**BENEFICE** (from the Latin *Beneficium*), a term applied both by the canon law and the law of England to a provision for an ecclesiastical person. In its most comprehensive sense it includes the temporalities as well of archbishops, bishops, deans and chapters, abbots and priors, as of parsons, vicars, monks, and

other inferior spiritual persons. But a distinction is made between benefices attached to communities under the monastic rule (*sub regulâ*), which are called *regular* benefices, and those the possessors of which live in the world (*in sæculo*), which are thence called *secular* benefices. The writers on the canon law distinguish moreover between simple or *sinecure* benefices, which do not require residence, and to which no spiritual duty is attached but that of reading prayers and singing (as chaplainries, canonries, and chantries), and *sacerdotal* benefices, which are attended with cure of souls.

Lord Coke says, "Beneficium is a large word, and is taken for any ecclesiastical promotion whatsoever." (2 *Inst.* 29.) But in modern English law treats the term is generally confined to the temporalities of parsons, vicars, and perpetual curates, which in popular language are called *livings*. The legal possessor of a benefice attended with cure of souls is called the incumbent. The history of the origin of benefices is involved in great obscurity. The property of the Christian church appears, for some centuries after the apostolic ages, to have been strictly enjoyed in common. It was the duty of the officers called *deacons* (whose first appointment is mentioned in *Acts*, cap. vi.) to receive the rents of the real estates, or *patrimonies*, as they were called, of every church. Of these, as well as of the voluntary gifts in the shape of alms and oblations, a sufficient portion was set apart, under the superintendence of the bishop, for the maintenance of the bishop and clergy of the diocese; another portion was appropriated to the expenses of public worship (in which were included the charge for the repairs of the church), and the remainder was bestowed upon the poor. This division was expressly inculcated by a canon of Gelasius, pope, or rather bishop, of Rome, A.D. 470. (See Father Paul's *Treatise on Ecclesiastical Benefices*, cap. 7.) After the payment of tithes had become universal in the west of Europe, as a means of support to the clergy, it was enacted by one of the capitularies of Charlemagne, that they should be distributed according to this division. When the bishoprics be-

gan to be endowed with lands and other firm possessions, the bishops, to encourage the foundation of churches, and to establish a provision for the resident clergy, gave up their portion of the tithes, and were afterwards by the canons forbidden to demand it, if they could live without it. Although the revenues of the church were thus divided, the fund from which they were derived remained for a long time entirely under the same administration as before. But by degrees every minister, instead of carrying the offerings made in his own church to the bishop, for the purpose of division, began to retain them for his own use. The lands also were apportioned in severalty among the resident clergy of each diocese. But these changes were not made in all places or all at one time, or by any general order, but by insensible degrees, as all other customs are introduced. (See Father Paul's 'Treatise on Benefices,' cap. 9 and 10.) "Some writers have attributed the origin of parochial divisions to a period as early as the fourth century; and it is not improbable that this change took place in some parts of the Eastern Empire, either in that or the succeeding age. Some of the Constitutions of Justinian seem to imply that in his time (the beginning of the sixth century) the system of ecclesiastical property, as it existed in the East, was very similar to that which has prevailed in Catholic countries in modern times." The churches, monasteries, and other pious foundations possessed landed and other property (slaves among the rest), which, by the Constitutions of Justinian, they were restrained from alienating, as they had been in the habit of doing to the detriment of their successors. (Authentica, Const. vii. "On not alienating ecclesiastical things, &c.")

The general obscurity that hangs over the history of the Middle Ages prevents us from ascertaining, with precision, at what period the changes we have alluded to were introduced into the west of Europe. This, however, seems clear, that after the feudal system had acquired a firm footing in the west of Europe, during the ninth and tenth centuries, its principles were soon applied to ecclesiastical as well as

lay property. Hence, as the estates distributed in fief by the kings of France and Germany among their favoured nobles were originally termed *beneficia* [BENEFICIUM], this name was conferred, by a kind of doubtful analogy, upon the temporal possessions of the church. Thus, the bishoprics were supposed to be held by the bounty of the kings (who had by degrees usurped the right originally vested in the clergy and people of filling them up when vacant), while the temporalities of the inferior ecclesiastical offices were held of the bishops, in whose patronage and disposal they for the most part then were. The manner of investiture of benefices in those early times was probably the same as that of lay property, by the delivery of actual possession, or of some symbols of possession, as the ring and crozier, which were the symbols of investiture appropriated to bishoprics.

Benefices being thus endowed, and recognised as a species of private property, their number gradually multiplied during the ages succeeding that of Charlemagne. In England especially several causes contributed to the rise of parochial churches. "Sometimes" (says Dr. Burn, *Eccles. Law*, title "Appropriation") "the itinerant preachers found encouragement to settle amongst a liberal people, and by their assistance to raise up a church and a little adjoining manse. Sometimes the kings, in their country villas and seats of pleasure or retirement, ordered a place of worship for their court and retinue, which was the original of royal free chapels. Very often the bishops, commiserating the ignorance of the country people, took care for building churches as the only way of planting or keeping up Christianity among them. But the more ordinary method of augmenting the number of churches depended on the piety of the greater lords, who, having large fees and territories in the country, founded churches for the service of their families and tenants within their dominion. It was this that gave a primary title to the patronage of laymen; it was this made the bounds of a parish commensurate to those of a manor; and it was this distinct property of lords and tenants that by degrees allotted new parochial bounds, by

the adding of new auxiliary churches.” [ADVOWSON.]

It appears, however, from the last-mentioned author, that if there were any new fee erected within a lordship, or there were any people within the precinct not dependent on the patron, they were at liberty to choose any neighbouring church or religious house, and to pay their tithes and make their offerings wherever they received the benefits of religion. This by degrees gave rise to the arbitrary appropriation of tithes, which, in spite of positive enactment, continued to prevail till the end of the twelfth century, when Pope Innocent III. by a decretal epistle to the archbishop of Canterbury, enjoined the payment of tithes to the ministers of the respective parishes where every man dwelt. This injunction, though not having the force of a law, has been complied with ever since, so that it is now a universal rule of law in England, that tithes are due of common right to the parson of the parish, unless there be a special exemption. [TITHES.]

\* The twelfth century was also the æra of an important change in the manner of investiture of ecclesiastical benefices in England. (Blackstone, vol. ii. p. 23; Father Paul, c. 24.) Up to this time the simple donation of the patron was sufficient to confer a legal title to a benefice, provided the person to whom it was given was in holy orders, for otherwise he must be first presented to the bishop, who had power to reject him in case of unfitness; but the popes, who had in the eleventh and twelfth centuries successfully contended against every other species of ecclesiastical investiture being exercised by laymen, now procured that the presentation of the patron should not be of itself sufficient to confer an ecclesiastical benefice, even though qualified by the discretionary power of rejection (in case the benefice was given to a layman) which was already vested in the bishop. This was the origin of the ceremonies of *institution*, which is the mode of investiture of the spiritualities; and *induction*, which is the mode of investiture of the temporalities of a benefice. Where the bishop was the patron of the benefice, the two forms of *presentation* and *institution* were united in that of *collation*.

For the origin and nature of ecclesiastical patronage in England as a subject of property, the rules of law which apply to it as such, the limitations within which and the forms according to which it must be exercised, and the mode by which it may be vindicated, together with the respective rights of the bishop or ordinary, the archbishop, and the crown, in the case of lapse, see ADVOWSON; and also Burn's 'Ecclesiastical Law,' arts. "Advowson," "Benefice." The statute 3 & 4 Will. IV. c. 27, made some important alterations in the law on this subject. 1. By the old law, suits for recovery of advowsons were not within the statutes of limitations; but § 30 of the above-mentioned act subjects them to a period of limitation of three successive incumbencies, or sixty years, during which the enjoyment of the benefice has been by virtue of a title adverse to that of the person instituting the suit. By § 33 the utmost period within which an advowson can be recovered is limited to a hundred years from the time of an adverse presentation, without any intermediate exercise of the right of patronage by the person instituting the suit, or by any persons from whom he derives his title. The act abolishes certain ancient remedies for the disturbance of the right of patronage, (§ 36); so that except in certain cases, specified in §§ 37, 38 of the act, the sole method of vindicating the right now is by writ of *Quare Impedit*. [QUARE IMPEDIT.]

Although the popes, in denying to laymen the right of ecclesiastical investiture, had still left them in possession of the substantial part of the patronage of benefices, even this privilege was for some centuries not only very much questioned, but in many instances entirely wrested from them by papal encroachment. (Father Paul, c. 30, *et seq.*; Hallam's *Middle Ages*, vol. ii. c. 7.)

The first attacks by the popes upon the rights of private patrons (which took place towards the latter end of the twelfth century) assumed the form of letters of request called "mandates" or "expectatives," praying that benefices might be conferred on particular individuals. What was first asked as a favour was soon after claimed as a right, and rules were laid

down as to grants and revocations of expectatives. The popes next proceeded to claim the patronage of all benefices *vacantia in curiâ*, i. e. which fell vacant by the incumbents dying at the court of Rome. The number of these, through the management of that court, which contrived on various pretences to draw ecclesiastics of all ranks to Rome from different parts of Europe, became by degrees very considerable. But Clement V. in the beginning of the fourteenth century went beyond all his predecessors, by laying it down broadly as a maxim, that the full and free disposition of all ecclesiastical benefices belonged to the pope. (*Clementines*, lib. ii. tit. 5. c. 1; F. Paul, c. 35.) It followed as a consequence from this principle, that the pope could make reversionary grants, or *provisions*, as they were called, during the lives of the incumbents; and that he could reserve such benefices as he thought fit for his own peculiar patronage. At the same time, dispensations from the canons against non-residence and pluralities, and permissions to hold benefices in commendam, were freely granted, so that by these and similar means in some instances fifty or sixty preferments were held by the same person at once. The evils of this system were felt all over Europe. The best benefices were everywhere filled with Italian priests, ignorant alike of the language and habits of the people to whose spiritual wants they were bound to minister. England in particular suffered so much from papal encroachments during the reign of Henry III., that the English deputies at the Council of Lyon (about A.D. 1245) complained to the pope that the foreign clergy drew annually from England upwards of 70,000 marks. This remonstrance produced no effect, but the system at length became so intolerable, that a determined plan of opposition to it was gradually formed in the principal nations of Western Europe. In this opposition our own ancestors took the lead, and their efforts were in the end completely successful. The parliament assembled at Carlisle in the 35th year of Edward I. wrote a strong remonstrance to Pope Clement V. against the papal encroachments on the rights of patronage and the

numerous extortions of the court of Rome. This remonstrance appears to have produced no effect, but it may be cited as a proof of the spirit of the times. The government of Edward II. was too feeble to act upon this spirit. The first prince who was bold enough to assert the power of the legislature to restrain the papal encroachments was Edward III. After complaining ineffectually to Clement VI. of the abuse of papal reservations, he (A.D. 1350) procured the famous Statute of Provisors (25 Edw. III. stat. 6) to be passed. This act provided that all elections and collations should be free according to law, and that in case any provision, collation, or reservation should be made by the court of Rome of any archbishopric, bishopric, dignity, or other benefice, the king should for that turn have the collation of such archbishopric or other dignities elective, &c.

This statute was fortified by several others in this and the succeeding reigns, 27 Edw. III. stat. 1, c. 1; 38 Edw. III. stat. 1, c. 4; 3 Rich. II. c. 3; 7 Rich. II. c. 12 (which enacts that no alien\* shall be capable of being presented to any ecclesiastical preferment); 12 Rich. II. c. 15; 13 Rich. II. stat. 2, c. 2 and 3; 16 Rich. II. c. 5; 2 Hen. IV. c. 3; 7 Hen. IV. c. 8; 3 Hen. V. c. 4. These statutes, which inflict very severe penalties on persons endeavouring to enforce the authority of papal bulls and provisions in England, are sometimes called, from the initial words of the writ issued in execution of the process under them, the statutes of *præmunire*; and the offence of maintaining the papal power is itself (according to Blackstone, vol. iv. p. 112) called by the name of *præmunire*. The statutes against papal provisions (though not very strictly enforced) re-

\* Dr. Burn says:—"It seemeth that an alien, who is a priest, may be presented to a church." By 13 Rich. II. and 1 Hen. V. c. 7, Frenchmen were precluded holding benefices in England; and Lord Coke, on a review of the ancient statutes, is of opinion that the bishop ought not to admit an alien. The Bishop of Spalatro, an alien, was, however, appointed Dean of Windsor; and in Dr. Seaton's case, who was born in Scotland before the Union, it was held that he was capable to be presented to a benefice in England, and that so it would have been, had he been born in France, Spain, or in any friendly kingdom.

maintained unrepealed, in spite of the attempts of the popes and their adherents to obtain their abrogation.

The rights of ecclesiastical patronage, having been thus solemnly vindicated by the English parliament, have, in their fundamental principles, remained unaltered to the present time. The ceremonies of the presentation and institution in the case of lay patrons, and of collation where the bishop is patron, are still necessary to give a title to all benefices with a cure of souls, except those which are technically called perpetual curacies and donatives; and the title so given is incomplete without corporal induction into possession of the temporalities of the benefices. There are also certain acts enjoined either by the canon law or statute, the non-performance of which will subject the incumbent to the deprivation of the benefice into which he has been lawfully inducted.

There is no difference between institution and collation as to the action itself, but they differ somewhat in their respective consequences. Thus, by institution, the church is said to be full against all persons but the king, and if it has been full for the space of six months, this is a sufficient answer to any action by private persons, or even by the king, where he claims as a private patron and not by royal prerogative, as in case of lapse or otherwise. But by collation the church is not full so as to render a plea to that effect available in the temporal courts, except against the collator. Every clerk before institution or collation is required by the canon law to take the oath against simony, and the oath of the canonical obedience to the bishop, and to declare by subscription his assent to the doctrine of the king's supremacy, to the Book of Common Prayer, and the Thirty-nine Articles. The subscription to the Thirty-nine Articles is also imposed by statute 13 Eliz. c. 12, upon all persons to be admitted to any benefice with cure of souls. Moreover, the statutes 1 Eliz. c. 1, and 1 Will. and Mary, c. 8, § 5, require that every person collated or promoted to any ecclesiastical benefice shall, before he takes upon himself to supply or occupy the same, take the oaths of allegiance and

supremacy; and by statute 13 & 14 Car. II. c. 4 (commonly called the Act of Uniformity), every parson and vicar shall, before his admission to be incumbent, subscribe a declaration of conformity to the Liturgy of the Church of England as by law established.

The acts of institution or collation so far confer a right to the temporalities of the benefice, that the clerk may enter upon the glebe-land and take the tithes, but he cannot sue for them or grant them until induction. By induction the church becomes full, even against the king, and the clerk is seized of the temporalities of the benefice, and invested with the full rights and privileges of a parson, *persona ecclesiæ*; but by the Act of Uniformity he must, within two months after he is in actual possession of his benefice, upon some Sunday, openly before his congregation, read the morning and evening prayers, and declare his assent to the Book of Common Prayer, on pain, in case of neglect or refusal, of being *ipso facto* deprived of his benefice. The same statute obliges him, on pain of deprivation, to read publicly, within three months after his subscription to the declaration of conformity to the Liturgy, the bishop's certificate of his having made such subscription, together with the declaration itself: but the statute 23 Geo. III. c. 28, makes an exception where the incumbent is prevented by some lawful impediment, to be allowed and approved of by the ordinary of the place. The same penalty of deprivation is imposed by 13 Eliz. c. 12, in case of an incumbent failing, within two months after induction, to read publicly in the church the Thirty-nine Articles, and to declare his assent to them. The 23 Geo. III. c. 28, provides that, in case of sickness or other lawful impediment, it shall be deemed a sufficient compliance with the statute of Elizabeth if the incumbent reads the Articles, and declares his assent to them at the same time that he declares his assent to the Book of Common Prayer. Finally, by statute 1 Geo. I. sess. 2, c. 13, the parson must, within six months after his admission to the benefice, take the oaths of allegiance and abjuration in one of the courts at Westminster, or at the general quarter-

sessions of the peace, on pain of being incapacitated to hold the benefice, and of incurring certain other disabilities therein specified. Such are the means by which a clerk's legal title as a parson, rector, or vicar is acquired and maintained.

Every parson, or rector of a parish with cure of souls, and, where the parsonage is appropriated, every vicar, or perpetual curate, though in his natural capacity an individual, is in contemplation of law a body corporate, with perpetuity of succession. The rector or parson is entitled to the freehold of the parsonage-house and glebe-lands, as well as the tithes of the parish, except where a special exemption from the payment of tithes exists by prescription or otherwise; but owing to the practice of appropriation, which formerly prevailed to a great extent in England, and has been attended with very remarkable consequences, the tithes are now often vested in laymen, who have vicars or curates under them to perform the spiritual duties. [ANVOWSON.] This custom was not confined to spiritual corporations aggregate, but deans and other officers in cathedrals, and in some places even parish priests, procured the privilege of appointing a vicar to perform the spiritual duties of the church, while its revenues were appropriated to themselves and their successors. Hence it happens that in some places a rector and vicar are instituted to the same church; in which case the rector is excused from duty, and the rectory is called a sinecure benefice, as being *sine curâ animarum*. (Burn's *Eccles. Law*, tit "Appropriation.") In order to effectuate an appropriation it was necessary that the patron should obtain the consent of the king and the bishop, as each of these had an interest in the patronage of the church in case of lapse, which, as a corporation never dies, could not take place after the appropriation; and upon the making an appropriation, an annual pension was reserved to the bishop and his successors, called an indemnity, and payable by the body to whom the appropriation was made. In an ancient deed of appropriation preserved in the registry of the archbishop of Canterbury, the ground of the reservation is expressed to be for a recompense of the

profits which the bishop would otherwise have received during the vacancy of the benefice. (Burn, *Ibid.*)

After the appropriation the appropriators and their successors became perpetual parsons of the church; but if the corporation was dissolved, the perpetuity of persons being gone, the appropriation ceased, and the church recovered its rights.

This principle would have come into extensive operation at the time of the dissolution of the monasteries in England, if the legislature had not expressly provided against it. By the statutes 27 Henry VIII. c. 28, and 31 Henry VIII. c. 13, the possessions of these religious houses, and by a subsequent statute, 32 Henry VIII. c. 24, those of the Knights of St. John of Jerusalem, were all vested in the crown. In each of these statutes parsonages and tithes are expressly included, and the first two confirm the royal grants made or hereafter to be made of this property. Tithes are also included in two subsequent statutes, 37 Henry VIII. c. 4, and 1 Edward VI. c. 14, by which the possessions of chantries and religious fraternities are given to the crown. The last of these statutes empowers the king's commissioners, therein referred to, to ordain and sufficiently endow vicars in perpetuity in parish churches annexed to the religious fraternities whose possessions were confiscated by that act; and also to endow in perpetuity a schoolmaster or preacher in such places where the religious fraternities or incumbents of chantries were bound by the original foundation to keep a schoolmaster or priest. The property acquired by the crown from the above-mentioned sources, and from the dissolution of alien priories in the reign of Henry V., was freely bestowed by the kings of England, especially Henry VIII., not only upon spiritual persons and corporations, but upon laymen. Hence it is that there are so many instances in England at the present time of not merely the right to tithes, but the property of entire rectories being vested in laymen. These benefices are sometimes called lay, but more commonly impropriate rectories, as being (according to Spelman) improperly in the hands of

laymen. The rector is in that case termed the impropriator; but this appellation is now indiscriminately applied not only to lay individuals and corporations, but to all spiritual persons and corporations who, either by virtue of ancient appropriations or by grants from the crown since the dissolution of the religious fraternities, are entitled to the tithes and other revenues of the church without performing any spiritual duties. By statute 32 Henry VIII. c. 7, the remedies which the law had provided in the ecclesiastical courts for the subtraction of tithes are communicated to laymen, and their title to tithes is put on the same footing with that to land, by giving them the same or similar actions for vindicating their estates in those and other ecclesiastical profits against all adverse claimants whatsoever. In short, tithes and other fruits of benefices when vested in laymen, are liable to the same process of execution for debt, and subject to the same incidents of alienation, descent, escheat, and forfeiture as all other incorporeal real property. Moreover, by statute 43 Eliz. c. 2, tithes impropriate are made liable to poor-rates. They are also included in the Land-tax Acts; and by the late Statute of Limitations, 3 & 4 Will. IV. c. 27, actions and suits for their recovery are subject to the same periods of limitation as those for the recovery of land.

Another consequence of appropriation in England, besides the vesting the possessions of the church in laymen, was the endowment of vicarages. The appropriating corporations at first used to depute one of their own body to reside and officiate in the parish churches by turns or by lot, and sometimes by way of penance; but as this practice caused scandal to the church, especially in the case of monastic orders whose rules were thereby violated, the monks by degrees ceased to officiate personally in the appropriated churches, and this duty was committed to stipendiary vicars or curates, who were, however, removable at the will of the appropriators. One of the numerous pretexts urged by the monastic bodies for obtaining appropriations had been, that they might be the better enabled to keep up hospitality in their re-

spective houses, and that they might relieve the poor. These duties, however, were so far neglected as to give rise to general discontent. In addition to which the officiating priests were very poorly paid, and oppressed with hard service, and consequently unable to answer the calls of hospitality and charity. At length the legislature, by way of a partial remedy to these evils, enacted (15 Richard II. c. 6), "That in every licence for the appropriation of a parish church it should be expressed that the diocesan bishop should ordain, in proportion to the value of the church, a competent sum to be distributed among the poor parishioners annually, and that the vicarage should be sufficiently endowed." Still, as the vicar was removable at pleasure, he was not likely to insist very strictly on the legal sufficiency of the endowment. Therefore, to establish the total independence of vicars upon the appropriators, the statute 4 Henry IV. c. 12, provided, "That from thenceforth in every church appropriated there should be a secular person ordained vicar perpetual, canonically instituted and inducted, and covenantably (fitly) endowed by the discretion of the ordinary, to do divine service, and to inform the people, and to keep hospitality there; and that no religious, *i. e.* regular priest, should in anywise be made vicar in any church appropriated." From the endowments made in pursuance of this statute have arisen all the vicarages that exist at the present day. The title of the vicar to tithes and other ecclesiastical dues, such as Easter offerings (which are said to be due to the parson or vicar of common right), and customary payments for marriages, burials, and baptisms, depends primarily upon the deed of endowment. As, however, the rector and vicar are persons equally capable in law of holding such property, the deed is not always conclusive evidence in any question that may arise between these parties as to their respective rights; but it is said, that where either of them has for a long time had undisputed enjoyment of any particular portion of the tithes or other fruits of the benefice, which is not consistent with the terms of the original deed, a variation of that deed by some subsequent instrument may be



presumed in favour of such long enjoyment. The endowments of vicarages have generally consisted of a part of the glebe-land of the parsonage, and what are technically called the small tithes of the parish. In some places also a portion of the great tithes has been added to the vicarages. [TITHES.]

A vicarage by endowment becomes a distinct benefice, of which the patronage is vested in the impropriator or sinecure rector, and is said to be appendant to the rectory. It follows that the vicar, being endowed with separate revenues, is enabled to recover his temporal rights without the aid of the patron.

The loss of the original Act of Endowment is supplied by prescription; *i. e.* if the vicar has enjoyed any particular tithes or other fruits by constant usage, the law will presume that he was legally endowed with them.

If the impropriator, either by design or mistake, presents the vicar to the parsonage, the vicarage will be dissolved, and the person presented will be entitled to all the ecclesiastical dues as rector.

It is to be observed that the statute 4 Henry IV. c. 12, did not extend to appropriations made before the first of Richard II. Hence it happens that in some appropriated churches no vicar has ever been endowed. In this case the officiating minister is appointed by the impropriator, and is called a perpetual curate. He enters upon his official duties by virtue of the bishop's licence only, without institution or induction. It appears, moreover, from Dr. Burn (*Eccles. Law*, tit. "Curate"), that there were some benefices which, being granted for the purpose of supporting the hospitality of the monasteries (*in mensas monachorum*), and not appropriated in the common form, escaped the operation of the statute of Henry IV. In this case, according to the same author, the benefices were served by temporary curates belonging to the religious houses, and sent out as occasion required; and sometimes the liberty of not appointing a perpetual vicar was granted by dispensation, in benefices not annexed to tables of the monasteries. When such appropriations, together with the charge of providing for the cure, were transferred

(after the dissolution of monasteries) from spiritual societies to single lay persons (who, being incapable of serving them themselves, were obliged to nominate a person to the bishop for his licence to serve the cure), the curate by this means became so far perpetual as not to be removable at the pleasure of the impropriator, but only for such causes as would occasion the depriving of a rector or vicar, or by the revocation of the bishop's licence. (Burn, *Ibid.*) Though the form of licences to perpetual cures expresses that they last only during the bishop's pleasure, the power of revocation, thus reserved to the bishop, has seldom, if ever, been exercised.

There is another kind of perpetual curacy which arises from the erection in a parish of a chapel-of-ease subject to the mother church. But the curacies of chapels-of-ease are not benefices in the strict legal sense of the word, unless they have been augmented out of the fund called Queen Anne's Bounty. The officiating ministers are not corporations in law with perpetuity of succession, as parsons, vicars, and other perpetual curates. Neither are chapels-of-ease subject to lapse, although the bishop may, by process in the ecclesiastical courts, compel the patrons to fill them up. But the statute 1 Geo. I. sess. 2, c. 10, provides that all churches, curacies, or chapels which shall be augmented by the governors of Queen Anne's Bounty shall be from thenceforth perpetual cures and benefices, and the ministers duly nominated and licensed thereunto shall be in law bodies politic and corporate, and have perpetual succession, and be capable to take in perpetuity; and that if suffered to remain void for six months they shall lapse in like manner as presentative livings. The 59 Geo. III. c. 134, contained provisions enabling the Church Building Commissioners to assign districts to chapels under the cure of curates, and it enacted that no such chapelry should become a benefice by reason of any augmentation of the maintenance of the curate by any grant or bounty. Both this statute and that of 1 Geo. I. were partially repealed by 2 & 3 Vict. c. 49, which has a clause enacting that any church or chapel augmented by

Queen Anne's Bounty, and which has had, or may hereafter have, a district assigned to it, is to be a perpetual curacy and benefice. The commissioners for building new churches may assign districts to them, and such church or chapel may be augmented by the governors of Queen Anne's Bounty.

The district churches built in pursuance of several recent acts (as 58 Geo. III. c. 45; 59 Geo. III. c. 134; 3 Geo. IV. c. 72; 5 Geo. IV. c. 103; 7 & 8 Geo. IV. c. 72; 1 & 2 Will. IV. c. 38; 2 & 3 Will. IV. c. 61; 7 Will. IV. & 1 Vict. c. 107; 2 & 3 Vict. c. 49; 3 & 4 Vict. c. 60) are made perpetual cures, and the incumbents corporations.

A donative is a spiritual preferment, whether church, chapel, or vicarage, which is in the free gift of the patron, without making any presentation to the bishop, and without admission, institution, or induction by mandate from the bishop or any other; but the donee may by the patron, or by any other authorized by the patron, be put into possession. Nor is any licence from the bishop necessary to perfect the donee's title to possession of the donative, but it receives its full effect from the single act and sole authority of the donor. The chief further peculiarity of donatives is their exemption from episcopal jurisdiction.

The manner of visitation of donatives is by commissioners appointed by the patron. If the patron dies during the vacancy of a donative benefice, the right of nomination descends to the heir-at-law, and does not belong to his executors, as is the case with the patronage of presentative livings. Donatives, if augmented by Queen Anne's Bounty, become liable to lapse, and also to episcopal visitation. (1 Geo. I. sess. 2, c. 10.) But no donatives can be so augmented without the consent of the patron in writing, under his hand and seal. Both perpetual curates and incumbents of donatives are obliged to declare their assent to the Thirty-nine Articles and the Book of Common Prayer, in the manner prescribed by the statute 13 Eliz. c. 12, and the Act of Uniformity above mentioned, and must also take the oaths of allegiance, supremacy, and abjuration, accord-

ing to the provisions of statutes 1 Geo. I. sess. 2, c. 13, and 9 Geo. II. c. 26; and the right of patronage, both of perpetual curacies and donatives, is to be vindicated by writ of *Quare Impedit*. (Burn, *Eccles. Law*, tit. "Donative.")

Neither the augmentation nor the alienation of benefices with cure of souls was favoured by the old English law. To prevent augmentation was one of the objects of the statutes of Mortmain, one of which (23 Hen. VIII. c. 10) expressly makes void all assurances of lands in favour of parish churches, chapels, &c.

It might have been reasonably expected that, at the time of the dissolution of monasteries, the clergy would have received back those revenues which, being originally vested in them for religious purposes, had been subsequently appropriated by the monks. Such a measure, however, was not agreeable to the temper either of King Henry VIII. or his parliaments. When that king came to a rupture with the pope, he resolved to free his dominions from the payment of first-fruits and tenths to the papal treasury. The first of these taxes consisted of one year's whole profits of every spiritual preferment, according to a valuation of benefices made by the pope's authority; the second, of the tenth part of the annual profit of each benefice, according to the same valuation. The payment of these to the pope was prohibited by statute 25 Henry VIII. c. 20; and the next year, by statute 26 Henry VIII. c. 3, the whole of the revenue arising therefrom was annexed to the crown. The last-mentioned statute directed these taxes to be paid according to a new valuation of ecclesiastical benefices to be made by certain commissioners appointed for the purpose. This valuation is what is called the valuation of the king's books. The statute 26 Henry VIII. c. 3, was confirmed by statute 1 Eliz. c. 4. [FIRST FRUITS and TENTHS.]

The subsequent proceedings of Henry VIII., after the appropriation of the possessions of the monasteries, tended rather to enrich the collegiate and other corporations aggregate with the revenues of the church, than to revest them in their ancient possessors. Nor was the latter

object the aim of his successors until more than a century after his death; but after the restoration of Charles II. the scandal of lay impropriations gave rise to some relaxation of the statutes of mortmain. Thus by statute 17 Car. II. c. 3, power was given to lay impropriators of tithes to annex such tithes to, or settle them in trust for, the parsonage or vicarage of the parish church to which they belonged, or for the perpetual curate, if there was no vicarage endowed; and by the same statute, in cases where the settled maintenance of the parsonage or vicarage, with cure, did not amount to the full sum of 100*l.* a year, clear of all charges and reprises, the incumbent was empowered to purchase for himself and his successors lands and tithes, without licence of mortmain. Another statute of the same reign (29 Car. II. c. 8) confirms, for a perpetuity, such augmentations of vicarages and perpetual curacies as had been already made for a term of years by ecclesiastical corporations on granting leases of impropriatory rectories. The act also confirms future augmentations to be made in the same manner, subject to a limitation which has since been taken off by statute 1 & 2 Will. IV. c. 45, by which the provisions of 29 Car. II. c. 8, have been considerably extended. The acts 1 & 2 Vict. c. 107, and 3 & 4 Vict. c. 113, have made further provisions for the augmentation of benefices. But the principal augmentation of the revenues of the church was made under the provisions of the statute 2 & 3 Anne, c. 11. By this act, and by the queen's letters-patent made in pursuance of it, all the revenue of the first-fruits and tenths was vested in trustees for the augmentation of small benefices. This fund is what is usually called Queen Anne's Bounty, and has since been further regulated by statutes 5 Anne c. 24; 6 Anne, c. 27; 1 Geo. I. sess. 2, c. 10; 3 Geo. I. c. 10.

The trustees, who are certain dignitaries of the church, and other official personages for the time being, are incorporated by the name of "the governors of the Bounty of Queen Anne, for the augmentation of the maintenance of the poor clergy," and have authority to make rules for the distribution of the fund, which

rules are to be approved of by the king under his sign manual. Every person having any estate or interest in possession, reversion, or contingency, in lands or personalty, is empowered to settle such estate or interest, either by deed enrolled or will, upon the corporation, without licence of mortmain; and the corporation are empowered to admit benefactors to the fund into their body. (For the principal rules established by the corporation, with respect to augmentations and the operation of these rules, see Burn's *Eccles. Law*, tit. "First-Fruits and Tenths.")

The 1 Geo. I. sess. 2, c. 10, renders valid agreements made with benefactors to Queen Anne's Bounty, concerning the right of patronage of augmented churches in favour of such benefactors, where the agreements are made by persons or bodies corporate having such an interest in the patronage of such churches as the act renders necessary; but an agreement by a parson or vicar must be made with consent of his patron and ordinary. The governors are also empowered by the same statute to make agreements with patrons of donatives or perpetual cures for an augmented stipend to the ministers of such benefices when augmented, to augment vacant benefices, and, with the concurrence of the proper parties, to exchange lands settled for augmentation.

It should be observed that a modern statute of mortmain, the Statute of Charitable Uses, 9 Geo. II. c. 36, imposed certain forms, a strict compliance with which was necessary in all gifts to Queen Anne's Bounty. But these restrictions have been removed by statute 43 Geo. III. c. 107, as far as respects gifts of real property for augmentation of the bounty; and a provision for the augmentation of benefices not exceeding 150*l.* per annum was made by 46 Geo. III. c. 133, which discharged all such benefices from the land-tax, without any consideration being given for the discharge, with a proviso that the whole annual amount thus remitted should not exceed 6000*l.*

The Ecclesiastical Commissioners for England have, since October, 1842, been pursuing a scheme for the augmentation of small livings, by which an annual net

income as nearly as may be of 150*l.* will be secured to the incumbent of every benefice or church with cure of souls, being either a parish church or chapel, with a district legally assigned thereto, and having a population of 2000, and not being in the patronage of lay proprietors. The funds for augmentation accrue from the suspension of cathedral endowments. The number of livings which had been augmented to May 1, 1844, was 562, and the total sum applied is 29,809*l.* The following table will show more distinctly what has been done in the case of 496 livings:—

Income raised to	No. of Livings.	Annual Augmentation.	Population.
£150	261	£16,722	2000*
120	96	4,374	1000
100	80	3,253	500
80	59	1,430	500
	496	25,779	

The alienation of the temporalities of benefices, even in perpetuity, was not forbidden by the common law, provided it were made with the concurrence of the principal parties interested, viz. the parson, patron, and ordinary. Thus, at the common law, lands might have become exempt from the payment of tithe by virtue of an agreement entered into between the tithe-payer and the parson or vicar, with the necessary consent, for the substitution of land in lieu of tithe. But the statute 13 Eliz. c. 10, prohibits, among other bodies corporate, parsons and vicars from making any alienation of their temporalities beyond the life of the incumbent, except by way of lease for twenty-one years, or three lives, "whereupon the accustomed yearly rent or more shall be reserved and payable yearly during the said term." Further restrictions are imposed by the stat. 18 Eliz. c. 11, which requires that where any former lease for years is in being, it must be expired, surrendered, or ended within three years next after the making of the new lease, and all bonds and covenants for renewing or making leases contrary to this and the last-mentioned statute are made void. The stat. 14 Eliz. c. 11, as to houses in

towns, extends the term specified in the 13 Eliz. c. 10, to forty years, but prohibits leases of such houses in reversion, and allows of absolute alienation by way of change. But the consent of patron and ordinary is still necessary in order to make the leases of parsons and vicars binding upon their successors. It is said that about the time when these statutes were passed, it was a practice for patrons to present unworthy clergymen to their vacant benefices, on condition of having leases of those benefices made to themselves at a very low rate. The consequences of this were not unlike what ensued from the appropriation of benefices by monastic corporations: the incumbents did not reside, and the churches were indifferently served by stipendiary curates. To remedy this evil, it was provided by stat. 13 Eliz. c. 20 (made perpetual by 3 Car. I. c. 4), that no lease of a benefice with cure should endure longer than while the lessor should be ordinarily resident and serving the cure, without absence for more than eighty days in any one year, but should immediately, upon non-residence, become void; and that the incumbent should forfeit one year's profits of the benefice, to be distributed among the poor: but the statute contains an exception of the case where a parson, allowed by law to have two benefices, demises the one upon which he is not most ordinarily resident to his curate. The 18 Eliz. c. 11, provides that process of sequestration shall be granted by the ordinary to obtain the profits so forfeited. By stat. 14 Eliz. c. 11, bonds and covenants, and by stat. 43 Eliz. c. 9, judgments entered into or suffered in fraud of the stat. 13 Eliz. c. 20, are made void.

The 13 Eliz. c. 20, also renders void all charges upon ecclesiastical benefices by way of pension or otherwise. This last provision has been held to extend to mortgages and annuities, even if made only for the life or incumbency of the mortgagor. But the strictness of the laws prohibiting all alienations by or in favour of ecclesiastical persons, has in modern times been somewhat relaxed by the legislature for purposes of public convenience. Thus the General Inclosure Act, 41 Geo. III. c. 109, and the Land-tax

\* And upwards.

Redemption Act (42 Geo. III. c. 116, amended by 45 Geo. III. c. 77, 50 Geo. III. c. 58, 53 Geo. III. c. 123, 54 Geo. III. c. 17, and 57 Geo. III. c. 100), confer ample powers of purchase and alienation for such purposes.

Other acts, as 17 Geo. III. c. 53 (amended by 21 Geo. III. c. 66, and 5 Geo. IV. c. 89), empower ecclesiastical incumbents, with consent of patron and ordinary, to raise money by sale or mortgage of the profits of the benefice, for a term, for the purpose of building and repairing parsonage-houses; and the governors of Queen Anne's Bounty are permitted to advance money for the same object. (See also 43 Geo. III. c. 108, and 51 Geo. III. c. 115.)

Again, the stat. 55 Geo. III. c. 147 (amended by 1 Geo. IV. c. 6, 6 Geo. IV. c. 8, and 7 Geo. IV. c. 66) empowers incumbents, with consent of patron and ordinary, and according to the forms prescribed by the act, to exchange their parsonage-houses and glebe-lands, and to purchase and annex to their benefices other parsonage-houses and glebe-lands. (See also 56 Geo. III. c. 141.) And by the above-mentioned stat. 1 & 2 Will. IV. c. 45, rectors and vicars are enabled to charge their benefices in favour of chapels-of-ease within their cures.

Although an ecclesiastical benefice cannot be alienated for the satisfaction of the incumbent's debts, the profits may be sequestrated for that purpose, even where the debt arises from an annuity which the incumbent has attempted to charge upon the benefice. (2 Barn. and Adolp. 734.) And this is the ordinary practice upon a judgment against a clergyman in one of the temporal courts. The writ of *fieri facias* issues against him as in the case of a layman, but the sheriff returns that he is a beneficed clerk having no lay fee; upon which a writ of *levari facias* issues to the bishop of the diocese, by virtue of which the profits of the benefice are sequestrated until the whole debt is satisfied.

In case of a beneficed clergyman seeking his discharge under the Insolvent Act, the assignees of his estate must apply for a sequestration, in order to render the profits of the benefice available for

the payment of his debts. (7 Geo. IV. c. 57, § 28.)

The duties and liabilities of spiritual persons come more properly under the head of CLERGY, but it is not inconsistent with the subject of the present article to mention the non-residence of spiritual persons upon their benefices, which (besides being cognizable in the ecclesiastical courts) is visited with severe penalties by different acts of parliament. The principal of the old enactments on the subject is stat. 21 Hen. VIII. c. 13 (amended and enlarged by 25 Hen. VIII. c. 16, 28 Hen. VIII. c. 13, and 33 Hen. VIII. c. 28), which imposed certain penalties upon persons wilfully absenting themselves from their benefices for one month together, or two months in the year. The 21 Hen. VIII. c. 13, was repealed by 1 & 2 Vict. c. 106.

The following was the state of the law respecting non-residence prior to the passing of the important statute of 1 & 2 Vict. c. 106. We give these details, as they are of some historical interest. The chief statutes on the subject were the 21 Hen. VIII. c. 13 (and other acts of that king), and 57 Geo. III. c. 99. The act of Hen. VIII. excepted the chaplains to the king and royal family, those of peers, peeresses, and certain public officers, during their attendance upon the household of such as retain them; and also all heads of colleges, magistrates, and professors in the universities, and all students under a certain age residing there *bonâ fide* for study. And the king might grant dispensations for non-residence to his chaplains, even when they were not attending his household. The residence intended by the law was to be in the parsonage-house, if there were one; but if there were no house of residence, the incumbent might reside within the limits of the benefice, or of the city, town, or parish where the benefice was situate, provided such residence were within two miles from the church or chapel of the benefice; and in all such cases a residence might be appointed by the bishop, even without the limits of the benefice. These acts (which extended also to archdeacons, deaneries, and dignities in cathedral and collegiate churches) were consolidated and

amended by stat. 57 Geo. III. c. 99, now repealed. By this last act, every incumbent absenting himself from a benefice with cure, without licence, for the period of three months consecutively, or at several times for so many days as are equal to this period, and abiding elsewhere than at some other benefice, forfeited for an absence exceeding three months, but not above six months, one-third of the annual value of the benefice, clear of all outgoings except the curate's salary. Absences of a longer duration were subjected to proportional penalties, and the whole of the penalty in each case was given to the party suing, together with such costs as are allowed by the practice of the court where the action is brought. All who were exempt from residence before the last statute were still exempt, and the exemption was extended to several others, including public officers in either of the two universities, and tutors and public officers in any college. Students in the universities were exempted till they were thirty years of age; and the king's prerogative to grant dispensations for non-residence to his chaplains was not affected by the statute. But no person could have the benefit of an exemption, unless he made a notification of it every year, within six weeks from the 1st of January, to the bishop of the diocese. Besides the exemptions, the bishop might grant a licence for non-residence for the illness or infirmity of an incumbent, his wife or child, and for other causes specified in the act; and if the bishop refused a licence, the incumbent might appeal to the archbishop. The bishop might also grant licences for non-residence for causes not specified in the act, but in that case the licences must be allowed by the archbishop. Licences might be revoked, and no licence could continue in force above three years from the time of its being granted, or after the 31st of December in the second year after that in which it was granted. The act also contained directions with respect to the lists of exemptions and licences for non-residence, which were to be kept in the registry of each diocese for public inspection.

The act 57 Geo. III. c. 99 (repealed, as already observed, by 1 & 2 Vict.

c. 106), provided also for the appointment of licensed curates in benefices, the incumbents of which were absent with or without licence or exemption, and regulated the salaries of such curates upon a scale proportioned to the value of each benefice, and the number of the population within its precincts; and in all cases of non-residence from sickness, age, or other unavoidable cause the bishop might fix smaller salaries at his discretion.

The subject of non-residence is now regulated by 1 & 2 Vict. c. 106. Under this act the penalties for non-residence of an incumbent without a licence are one-third of the annual value of the benefice when the period of absence exceeds three and does not exceed six months; one-half of the annual value when the absence exceeds six and does not exceed eight months; and when the period of non-residence has been for the whole year, three-fourths of the annual income is forfeited. Certain persons are exempt from the penalties of non-residence, as the heads of colleges at Oxford and Cambridge, the warden of Durham University, and the head-masters of Eton, Winchester, and Westminster schools. Privileges for temporary non-residence are granted to a great number of persons, as persons holding offices in cathedrals and at the two universities of Oxford and Cambridge; chaplains of the royal family, of the bishops, or of the House of Commons; those who serve the office of chancellor, vicar-general, or other similar office; readers in the royal chapels; preachers in the inns of court or at the Rolls; the provost of Eton, warden of Winchester College, master of the Charter-House, and the principals of St. David's College and of King's College. During the time any of the above classes or persons are actually engaged in their duties, their absence is not accounted as non-residence. Performance of cathedral duties may be accounted as residence under certain restrictions. Every person desirous of a licence for non-residence must present a petition to the bishop setting forth a number of particulars, for instance, if he intends to employ a curate, and what salary he proposes to give him, &c. In case of a licence being refused, an appeal lies to

the archbishop. A copy of every licence must be filed in the registry of the diocese, and an alphabetical list made out of all such licences, which list may be inspected on payment of a fee of three shillings. A copy of the licence, and a statement of the grounds on which it was obtained, must be transmitted to the churchwardens of the parish of which the person mentioned in the licence is the incumbent, to be by them deposited in the parish chest, and produced at the archdeacon's visitation. Every year, in the month of January, the bishop of each diocese transmits to his clergy a schedule containing eighteen questions, or, if the incumbent be non-resident, twenty-eight questions, replies to which are to be transmitted to the bishop in three weeks. They are intended, amongst other things, to check non-residence, and to render the discipline and government of the clergy more strict. An abstract of the returns is to be made yearly to her Majesty in Council.

There are certain liabilities which parsons, vicars, and other spiritual persons legally incur in respect of their benefices. Thus, by 43 Eliz. c. 2, they are rateable in respect of their benefices for the relief of the poor; and, although the burden of the repairs of the body of the church falls upon the parishioners, the rector (and, where the parsonage is appropriated, the impropiator) is liable for the repairs of the chancel. And the stat. 35 Edw. I. sess. 2, the object of which was to prohibit rectors from cutting down trees in churchyards, contains an express exception of the case where such trees are wanted for the repair of the chancel.

Besides the liability implied in the last-mentioned prohibition, all ecclesiastical incumbents are liable for dilapidations. A dilapidation is said to be the pulling down or destroying in any manner any of the houses or buildings belonging to a spiritual living, or suffering them to run into ruin or decay, or wasting or destroying the woods of the church, or committing or suffering any wilful waste in or upon the inheritance of the church. Such proceedings may be prevented by the spiritual censures of the ordinary; and the profits of the benefice may be seques-

tered until the damage be repaired; and the Court of Chancery will, at the suit of the patron, grant an injunction to restrain this as well as every other species of waste. Or the next incumbent may recover damages for dilapidations either in the Spiritual Court, or in an action on the case at common law against his predecessor, or, if he be dead, against his personal representatives.

The remedies for the subtraction of tithes given by the law of England to the clergy were sufficiently ample. [TITHES.]

With respect to actions and suits for recovery of lands or rents by parsons, vicars, or other spiritual corporations sole, the 3 & 4 Will. IV. c. 27, § 29, subjects them to the period of limitation of two successive incumbencies, together with six years after the appointment of a third person to the benefice, or in case of this period not amounting to sixty years, then to the full period of limitation of sixty years.

Having thus shown how possession of the different kinds of benefices in England is acquired and maintained, and what are the principal legal incidents of such possession, it remains to consider how benefices may be vacated or avoided. And this may happen several ways: 1. By the death of the incumbent. 2. By resignation, which is made into the hands of the ordinary, except in the case of donatives, which must be resigned into the hands of the patron, who alone has jurisdiction over them. The resignation must be absolute, unless it be for the purpose of exchange, in which case it may be made on the condition that the exchange shall take full effect. Where two parsons wish to exchange benefices, they must obtain a licence from the ordinary to that effect; and if the exchange is not fully executed by both parties during their lives, all their proceedings are void. (See Burn, *Eccles. Law*, tit. "Exchange.") 3. A benefice may be avoided by the incumbent's being promoted to a bishopric; but the avoidance in this case does not take place till the actual consecration of the new prelate. The patronage of the benefice so vacant belongs for that turn to the king, except in the case of a clergyman beneficed in

England accepting an Irish bishopric: for no person can accept a dignity or benefice in Ireland until he has first resigned all his preferments in England; so that in this case the patron, and not the king, has the benefit of the avoidance. The avoidance may be prevented by a licence from the crown to hold the benefice in commendam. Grants in commendam may be either temporary or perpetual. They are said to be derived from an ancient practice in the Roman Catholic church, whereby, when a church was vacant, and could not be immediately filled up, the care of it was commended by the bishop or other ecclesiastical superior to some person of merit, who should take the direction of it until the vacancy was filled up, but without meddling with the profits. This practice, however, in process of time being abused for the purpose of evading the provisions of the canon law against pluralities, became the subject of considerable complaint, and of some restraints, by the authority of popes and councils, and particularly of the celebrated Council of Trent in the sixteenth century. (See Father Paul's 'Treatise on Benefices.') A benefice may be granted in commendam to a bishop after consecration, but then the patron's consent must be obtained, in order to render the commendam valid. If the incumbent of a donative be promoted to a bishopric, no cession takes place, but it seems that he may retain the donative without a commendam. (Viner's *Abr. tit. "Presentation,"* K. 6.)

4. If an incumbent of a benefice with cure of souls accepts a second benefice of a like nature without procuring a dispensation, the first, by the provisions of the canon law, is so far void, that the patron may present another clerk, or the bishop may deprive; but till deprivation no advantage can be taken by lapse. The stat. 21 Henry VIII. c. 13, which was repealed by 1 & 2 Vict. c. 106, provided that where a person, having a benefice of the value of 8*l.* per annum or upwards, according to the valuation of the king's books, accepted any other, the first should be adjudged void, unless he obtained a dispensation in conformity with the pro-

visions of the statute. And dispensations not in conformity with the statute were declared void, and heavy penalties were imposed upon persons endeavouring to procure them. But by virtue of such dispensations, spiritual persons of the king's council might hold three benefices with cure, and the other persons qualified by the statute to receive dispensations might each hold two such benefices.

The persons who might receive dispensations were, the king's chaplains, those of the queen and royal family, and other persons who were allowed by the statute to retain a certain number of chaplains, and also the brethren and sons of all temporal lords, the brethren and sons of knights, and all doctors and bachelors of divinity and law admitted to their degrees in due form by the universities. The privilege was not extended to the brethren and sons of baronets, as the rank of baronet did not exist at the time when the statute was passed.

The statute expressly excepted deaneries, archdeaconries, chancellorships, treasurerhips, chanterhips, prebends, and sinecure rectories. Donatives are within the statute, if a donative is the first living; but if a donative is the second living taken without a dispensation, the first is not made void by the statute, the words of which are "instituted and inducted to any other," words not applicable to donatives. But it seems that both in the cases excepted by the statute, and in the case where the second living is a donative, a dispensation is equally necessary in order to hold both preferments, as otherwise the first would be voidable by the canon law.

The stat. 36 George III. c. 83, brought chapels and churches augmented by Queen Anne's Bounty within the Statute of Pluralities, by enacting that such churches and chapels shall be considered as presentative benefices, and that the licence to serve them shall render other livings voidable in the same manner as institution to presentative benefices. It appears that both by the common law and by the provisions of statute 37 Henry VIII. c. 21, and 17 Charles II. c. 3, a union or consolidation of two benefices into one might, with consent of patrons,



ordinaries, and incumbents, be made in such a manner as not to be affected by the statute of Pluralities. Under § 72 of 1 & 2 Vict. c. 106, benefices may be divided or consolidated with the consent of patrons, and there is a clause for apportioning in certain cases the incomes of two benefices belonging to one patron. (Burn's *Eccles. Law*, tit. "Union.")

For the manner of obtaining dispensations from the archbishop, and for the form of such dispensations, and of the confirmation thereof by the lord chancellor, and the provisions which the canon law requires to be inserted in such dispensations, see Burn's *Eccles. Law*, tit. "Plurality."

The subject of Pluralities is now regulated by 1 & 2 Vict. c. 106, entitled 'An Act to abridge the holding of Benefices in Plurality, and to make better provision for the residence of the clergy.' By this act no persons holding more benefices than one shall hold therewith any cathedral preferment or any other benefice. The term "cathedral preferment" comprehends every dignity and office in any cathedral or collegiate church. An archdeacon may hold two benefices with his archdeaconry under the limitations of the act. Two benefices held by one person must be within ten miles of each other, and a licence of dispensation must be obtained from the archbishop of Canterbury. No person is to hold a benefice with a population of more than three thousand persons, if he has already a benefice with a population exceeding five hundred persons; and two benefices cannot be held if their joint yearly value exceeds 1000*l*. If, however, the yearly value of one of the benefices be under 150*l*, and the population does not exceed 2000, two benefices may be held together, although their joint value exceed 1000*l*.; but the incumbent must give to the bishop a statement in writing of the reasons why the two benefices should be held together, and the bishop may require him to reside nine months in the year on one of them.

5. Another mode of avoidance of a benefice is by deprivation under a sentence of an ecclesiastical court. The principal causes on which sentence of deprivation is usually founded are heresy,

blasphemy, gross immorality; or conviction of treason, murder, or felony.

6. A benefice may be avoided by act of the law; as where the incumbent omits or refuses to subscribe the Thirty-Nine Articles, or declaration of conformity to the Liturgy, or to read the Articles or Book of Common Prayer, in pursuance of the statutes which render those acts necessary. But the most remarkable mode of avoidance which is to be classed under this head is that for simony, in pursuance of the statute 31 Elizabeth, c. 6. By this statute for the avoiding of simony, it is among other things enacted, that if any patron, for any sum of money, reward, profit, or benefit, or for any promise, agreement, grant, bond, or for any sum of money, reward, gift, profit, or benefit, shall present or collate any person to an ecclesiastical benefice with cure of souls or dignity, such presentation or collation shall be utterly void, and the crown shall present to the benefice for that turn only. The statute also imposes a penalty upon the parties to the simoniacal contract to the amount of double the value of a year's profit of the benefice, and for ever disables the person corruptly procuring or accepting the benefice from enjoying the same. And by statute 12 Anne, sess. 2. c. 12, a purchase by a clergyman, either in his own name or that of another, of the next presentation *for himself*, is declared to be simony, and is attended with the same penalties and forfeiture as are imposed by the statute of Elizabeth. Upon the construction of this statute of Elizabeth it has been held, that if the next presentation can be shown to have been purchased with the intention of presenting a particular person, who, upon a vacancy taking place, is presented accordingly, this fact is sufficient to render the transaction simoniacal. An exception has indeed been made in the case of a father providing for his son by the purchase of a next presentation, but the principle of this exception has lately been denied. (2 B. & C. 652.)

The circumstance of the incumbent being at the point of death at the time of the contract, may also vitiate the transaction; except where the fee simple of the advowson is purchased, in which case

it has been decided that the knowledge of the state of the incumbent's health does not make the purchase simoniacal.

It has been a question much agitated in our courts, whether a presentation is valid where the person presented enters into a bond or agreement, either generally to resign the benefice at the patron's request, or to resign it in favour of a particular person specified in the instrument. After several contrary decisions in the courts below, it was finally decided by the House of Lords, towards the latter end of the last century, that general bonds of resignation were simoniacal and illegal. A similar decision has lately been made by the same tribunal with respect to bonds of resignation in favour of specified persons. As there is no objection on the grounds of public policy to the last-mentioned instruments, if restrained within due limits, the interference of the legislature has been thought necessary in order to regulate transactions of this nature. On this account, after a retrospective act (7 & 8 Geo. IV. c. 25) had been passed, to remedy the hardships that might otherwise have been occasioned by the last-mentioned judgment of the House of Lords, it was finally enacted by the 9 Geo. IV. c. 94, that every engagement, *bonâ fide* made for the resignation of any spiritual office or living, in favour of a person, or one of two persons to be specially named therein, being such persons as were mentioned in a subsequent section of the act, should be valid and effectual in law, provided such engagement were entered into before the presentation of the party entering into the same. By the section referred to, where two persons are specially named in the engagement, each of them must be, either by blood or marriage, an uncle, son, grandson, brother, nephew, or grand-nephew of the patron (provided the patron is not a mere trustee), or of the person for whom the patron is a trustee, or of the person by whose direction the presentation is intended to be made, or of any married woman whose husband in her right is patron, or of any other person in whose right the presentation is intended to be made. The deed containing the engagement to resign must be deposited for

inspection with the registrar of the diocese wherein the benefice is situated, and every resignation made in pursuance of such an engagement must refer to the same, and state the name of the person for whose benefit it is made and becomes void, unless that person is presented within six months. The statute is limited in its operation to cases where the patronage is strictly private property.

There are certain benefices of which the patronage is either by custom or act of parliament vested in certain public officers or corporations. Thus, the lord chancellor has the absolute patronage of all the king's livings which are valued at 20*l.* per annum or under in the king's books. It is not known how this patronage of the chancellor was derived; but it appears from the rolls of parliament in the 4 Edward III., that the chancellor at that time had the patronage of all the king's livings of the value of 20 marks or under, and it is not improbable that at the time of making the new valuation of benefices in the reign of Henry VIII., a new grant was made to the chancellor by the crown, in consideration of the altered value or ecclesiastical property.

By the Municipal Corporations Act (5 & 6 Will. IV. c. 76) all advowsons, rights of presentation or nomination to any benefice or ecclesiastical preferment in the gift of any body corporate, according to the meaning of the act, were required to be sold under the direction of the ecclesiastical commissioners, and the proceeds invested in government securities, the interest on which was to be carried to the account of the borough fund (§ 139). The act 1 & 2 Vict. c. 31, was passed for facilitating this transfer of patronage.

By stat. 3 Jac. I. c. 5, popish recusants are disabled from exercising any right of ecclesiastical patronage; and the patronage of livings in the gift of such persons is vested in the two universities, according to the several counties in which the livings are situate. This disability was confirmed by the subsequent statutes 1 William and Mary, c. 26, 12 Anne sess. c. 14, and extended to cases where the right of patronage was vested in a trustee for a papist; and is not removed (along with the other disabilities affecting Roman

Catholics) by statute 10 George IV. c. 7. But the last-mentioned act provides, that where any ecclesiastical patronage is connected with any office in the gift of the crown, which office is held by a Roman Catholic, the patronage, so long as the office is so held, shall be exercised by the archbishop of Canterbury. The clause in 3 Jac. I. c. 5, relating to patronage held by Roman Catholics, is saved in the act 7 & 8 Vict. c. 102, for repealing a number of penal enactments against the Roman Catholics.

The church of Ireland being the same with that of England, the ecclesiastical polity of each is in its main principles the same. The same law of ecclesiastical patronage, the same classification of benefices, the same circumstances of lay impropriations, and, in short, the same ecclesiastical privileges and disabilities, may prevail in each country. But a most important alteration in the distribution of the revenues of the Irish church was effected by the 3 & 4 Will. IV. c. 37, amended by 4 & 5 Will. IV. c. 90. By this act certain ecclesiastical commissioners are established as a corporation for the augmenting of small livings out of the funds which come into their hands by virtue of the act, and for other ecclesiastical purposes. The funds in question are to arise partly from the revenues of certain bishoprics which are abolished, and the surplus revenues of the rest above certain limits fixed by the act; partly from the money paid by the tenants of lands held under bishops' leases renewable for ever, for a conversion of such leasehold interest into a perpetuity; and partly from a tax levied on all ecclesiastical dignities and benefices, according to a scale of taxation specified in a schedule to the act; in consideration of which tax all first-fruits are abolished. The commissioners are invested with extraordinary powers by the act. Thus, they have authority to disappropriate benefices united to dignities, and to unite them to vicarages in lieu thereof. They have also the power of suspending the appointment to benefices which are in the gift either of the crown, of archbishops, bishops, or other dignitaries, or of ecclesiastical corporations, where it appears that living service has not been performed

within such benefices for three years before the passing the act. [ECCLESIASTICAL COMMISSION.]

The number of benefices in Ireland will be as follows when the Church Temporalities Act comes into full operation:—

No.			
488	under the annua. value of	£150	
390	of	£150 and under	300
278	"	300	" 450
117	"	450	" 550
73	"	550	" 750
21	"	750	" 850
13	"	850	" 1000
8	"	1000	" 1100
4	"	1100	" 1250
3	"	1250	" 1500

The law respecting benefices in the church of Scotland will be found under the head of SCOTCH CHURCH.

We have already mentioned the attempts of the popes to acquire the right of patronage to all ecclesiastical benefices in Europe, and the successful measures that were taken in England for resisting their pretensions. After ineffectual attempts had been made at the councils of Constance and Basle, in 1414 and 1433, to check the papal encroachments, each of the principal European governments seems to have asserted in some measure its own ecclesiastical independence, either by entering into concordats with the pope, or assuming the right of controlling his pretensions by national legislation. [CONCORDAT.]

For the numerous abuses with respect to the patronage, acquisition, and transmission of benefices that prevailed in the Roman Catholic Church, especially in Italy, during the fifteenth and sixteenth centuries, see Father Paul's 'Treatise on Benefices,' cap. 44-46.

The Council of Trent in 1547 attempted to reform some of these evils, as that of pluralities and commendams, hereditary succession to the benefices, and non-residence; but left the great abuse of papal reservations untouched. The consequence of this, according to Father Paul (cap. 50), was that in his time (at the beginning of the seventeenth century) the reservations were multiplied to such a degree, that the pope had five-sixths of the benefices in Italy at his disposal.

*The following Table is abstracted partly from a Parliamentary Return presented to the House of Commons in 1834, and partly from the Report of the Commissioners appointed to inquire into the Ecclesiastical Revenues of England and Wales, published June, 1835.\**

A.	Number of Parishes.	Churches and Chapels.	Popula- tion, 1831.	B.	C.	D.	E.
St. Asaph, 143 benefices, comprises— Salop (part), Carnarvon (part), Denbigh (part), Flint (part), Me- rioneth (part), Montgomery (part)	139	143	191,156	£ 42,592	43	£ 3,564	2
Bangor, 123 benefices, comprises— Anglesey, Carnarvon (part), Den- bigh (part), Merioneth (part), Mont- gomery (part) .....	179	192	163,712	35,064	61	4,928	.
Bath and Wells, 430 benefices, com- prises part of Somerset .....	479	493	403,795	120,310	231	18,578	13
Bristol, 253 benefices, comprises— Dorset, Gloucester (part), Somerset (part) .....	298	306	232,026	77,056	133	10,668	3
Canterbury, 346 benefices, comprises —Bucks (part), Essex (part), Kent (part), Middlesex (part), Oxford (part), Suffolk (part), Surrey (part), Sussex (part) .....	369	374	405,272	123,946	174	14,656	2
Carlisle, 124 benefices, comprises— Cumberland (part), Westmoreland (part) .....	100	129	135,002	22,487	44	3,684	3
Chester, 630 benefices, comprises— Chester, Cumberland (part), Lan- caster, Westmoreland (part), York, N. Riding (part), York, E. Riding (part), Denbigh (part), Flint (part)	530	631	1,883,958	169,495	267	23,239	4
Chichester, 267 benefices, comprises —Sussex (part) .....	289	302	254,460	82,673	122	9,440	3
St. David, 409 benefices, comprises— Hereford (part), Brecon, Cardigan, Carmarthen, Glamorgan (part), Montgomery (part), Pembroke, Radnor (part), Monmouth (part) ..	525	561	358,451	60,653	207	11,464	7

\* It must be recollected that since the Report of the Ecclesiastical Commissioners in 1835, various alterations have been made in several Dioceses, and that the new Dioceses of Ripon and Manchester have been created; but no official return has yet been published showing the number of Benefices in each Diocese as now settled.

A. Diocese and number of Benefices in each returned to the Commissioners, including sinecure Rectories, but exclusive of Benefices annexed to other Preferments. Total number of Benefices, 10,517. B. Aggregate Amount of the gross Incomes of Incumbents in each Diocese, exclusive as before mentioned. Total, 3,193,498*l*. C. Number of Curates in each Diocese. Total, 5227. D. Amount of Stipends to Curates in each Diocese. Total, 424,549*l*. E. Number of Benefices in each Diocese not returned to the Commissioners. Total, 178.

A	Number of Parishes.	Churches and Chapels.	Popula- tion, 1831.	B.	C.	D.	E.
Durham, 192 benefices, comprises— Cumberland (part), Durham, North- umberland (part).....	140	214	469,933	£ 74,457	98	£ 8,556	2
Ely, 150 benefices, comprises—Cam- bridge (part), Norfolk (part)....	158	160	133,722	56,495	75	6,583	2
Exeter, 613 benefices, comprises— Cornwall and Devon.....	681	711	795,416	194,181	323	28,759	16
Gloucester, 283 benefices, comprises —Gloucester (part), Wilts (part)...	296	330	315,512	81,552	143	11,405	3
Hereford, 321 benefices, comprises— Hereford (part), Monmouth (part), Salop (part), Worcester (part), Montgomery (part) Radnor (part)	346	360	206,327	93,552	157	12,995	7
Lichfield and Coventry, 610 benefices, comprises—Derby, Salop (part), Stafford (part), Warwick (part)...	650	655	1,045,481	170,104	307	24,948	5
Lincoln, 1251 benefices, comprises— Bedford, Bucks (part), Herts (part), Hunts, Leicester, Lincoln, North- ampton (part), Oxford (part), Rut- land (part), Warwick (part).....	1370	1377	899,468	373,976	629	48,347	18
Llandaff, 192 benefices, comprises —Glamorgan (part), Monmouth (part).....	221	228	181,244	36,347	113	6,749	..
London, 640 benefices, comprises— Bucks (part), Essex (part), Herts (part), Middlesex (part).....	650	689	1,722,685	267,742	351	35,118	2
Norwich, 1026 benefices, comprises— Cambridge (part), Norfolk (part), Suffolk (part).....	1178	1210	690,138	331,750	521	38,510	37
Oxford, 196 benefices, comprises part of Oxfordshire.....	207	237	140,700	51,395	103	7,954	8
Peterborough, 293 benefices, comprises —Northampton (part), Rutland (part).....	335	338	194,339	98,381	139	11,266	6
Rochester, 94 benefices, comprises— Cambridge (part), Kent (part)....	107	111	191,875	44,565	60	6,551	2
Salisbury, 398 benefices, comprises— Berks, Wilts, Gloucester (part), ...	451	474	384,683	134,255	223	18,174	11
Winchester, 419 benefices, comprises —Hants and Surrey (part).....	408	464	729,607	153,995	202	19,858	7
Worcester, 223 benefices, comprises— Salop (part), Stafford (part), War- wick (part), Worcester (part)....	230	260	271,687	73,255	111	9,002	3
York, 891 benefices, comprises— Northumberland (part), Notts, York, E. Riding (part), York, N. Riding (part), York, W. Riding ..	741	876	1,496,538	223,220	390	29,553	12

Total Number of Parishes, 11,067; of Churches and Chapels, 11,825; Population, 13,897,187.

The Annual Average for each person upon the Total Gross Income returned is 303*l.*; and the Annual Average upon the Total Net Income returned is 235*l.* The Annual Average of the Curates' Stipends is 81*l.*

The Total Number of Benefices in England and Wales, including those not returned to the Commissioners, but exclusive of those annexed to other Preferments (24 in number), is 10,718. Of these Benefices 297 are under 50*l.*; 1629 from 50*l.* to 100*l.*; 1602 from 100*l.* to 150*l.*; 1354 from 150*l.* to 200*l.*; 1799 from 200*l.* to 300*l.*; 1326 from 300*l.* to 400*l.*; 830 from 400*l.* to 500*l.*; 954 from 500*l.* to 750*l.*; 323 from 750*l.* to 1000*l.*; 134 from 1000*l.* to 1500*l.*; 32 from 1500*l.* to 2000*l.*; 18 from 2000*l.* and upwards. Of these last, one is the rectory of Stanhope in the diocese of Durham, of the net annual value of 4843*l.*; and another is the rectory of Doddington in the diocese of Ely, of the net annual value of 7306*l.* The diocese of Sodor and Man is included in the total number of benefices.

The Total Gross Income of the Benefices in England and Wales, including those not returned, and calculated upon the Average of those returned, is 3,251,159*l.*; and the Total Net Income of the same is 3,055,451*l.*

If the amount of the Curates' Stipends, which is included in the Income of the Incumbents, is subtracted therefrom, the Net Income returned will be reduced to 2,579,961*l.*, giving an Average of 241*l.* to each Incumbent.

*Table classing the Patronage of Benefices, and showing the number possessed by each Class.*

DIOCESSES.	Crown.	Archbishops and Bishops.	Deans and Chap- ters, or Ecclesi- astical Corporations Aggregate.	Dignitaries and other Ecclesi- astical Corporations sole.*	Universities, Col- leges, and Hospi- tals, not Ecclesi- astical.†	Private Owners.	Municipal Cor- porations.‡
St. Asaph . . . . .	2	120	.	2	1	19	
Bangor . . . . .	6	78	1	7	3	29	
Bath and Wells . . . . .	21	29	39	103	23	224	4
Bristol . . . . .	12	15	11	42	14	159	10
Canterbury . . . . .	18	148	36	36	14	87	2
Carlisle . . . . .	4	20	27	19	3	54	
Chester . . . . .	26	34	34	227	13	299	6
Chichester . . . . .	19	31	21	49	15	130	
St. David's . . . . .	63	102	16	61	12	159	
Durham . . . . .	12	45	36	28	4	66	
Ely . . . . .	2	31	21	13	46	39	
Exeter . . . . .	63	44	69	117	11	309	5
Gloucester . . . . .	29	30	35	40	26	133	3
Hereford . . . . .	26	36	26	54	11	179	
Lichfield and Coventry . . . . .	53	18	10	122	6	391	5
Lincoln . . . . .	156	73	63	177	102	688	
Llandaff . . . . .	14	6	28	19	7	118	
London . . . . .	75	86	58	105	68	277	
Norwich . . . . .	95	85	47	124	86	596	13
Oxford . . . . .	12	13	22	16	59	78	
Peterborough . . . . .	31	18	12	40	32	171	
Rochester . . . . .	10	15	17	8	4	44	
Salisbury . . . . .	35	39	44	67	60	154	
Winchester . . . . .	30	53	15	79	53	197	
Worcester . . . . .	20	14	38	39	15	98	
York . . . . .	103	57	61	257	33	397	5
Sodor and Man . . . . .	15	8	.	.	.	1	
Total . . . . .	952	1248	787	1851	721†	5096	53‡

The above classification comprises only the patronage returned to the Commissioners. There are 178 non-returns, and 86 returned omitting the patronage.

As the patronage is frequently divided between different classes of patrons, and is included under each, it is obvious that the aggregate total of the above numbers will not agree with the total number of benefices.

\* This includes the patronage or nomination exercised by rectors and vicars.

† This number does not comprise the livings in the patronage of the dean and canons of Christ Church, which is included among the deans and chapters; and it is further to be observed, that united livings, and livings with chapels annexed, have in either case been treated as single benefices.

‡ These Benefices have been sold under the Municipal Corporations Act, 5 & 6 Wm. IV. c. 76, &c. and 2 Vict. c. 31.

*Table classing the Appropriations and Improvements; showing the Number possessed by each Class, and the Number of Cases in each Diocese in which the Vicarage is partly or wholly endowed with the Great Tithes.*

DIOCESSES.	Crown.	Archbishops and Bishops.	Deans and Chapters, or Ecclesiastical Corporations Aggregate.	Dignitaries and other Ecclesiastical Corporations sole.	Universities, Colleges, and Hospitals.	Private Owners.	Munpl. Corporations <sup>s</sup> (Adwosous sold).	Vicarages partly endowed.	Vicarages wholly endowed.
St. Asaph . . . . .	..	12	10	8	..	27	..	1	
Bangor . . . . .	..	11	7	7	..	29	..	3	
Bath and Wells . . . .	1	9	27	36	..	105	4	5	8
Bristol . . . . .	..	1	16	11	2	48	2	2	3
Canterbury . . . . .	..	48	46	12	8	49	1	2	7
Carlisle . . . . .	..	8	30	3	2	28	..	3	1
Chester . . . . .	2	21	28	5	15	113	..	6	3
Chichester . . . . .	..	7	11	19	5	67	..	3	12
St. David's . . . . .	1	18	20	49	4	124	2	13	4
Durham . . . . .	1	7	28	7	13	61	1	6	3
Ely . . . . .	..	10	26	.	19	27	..	2	1
Exeter . . . . .	2	5	61	23	4	156	7	9	11
Gloucester . . . . .	2	14	32	2	3	54	1	1	5
Hereford . . . . .	..	20	25	11	12	80	..	11	14
Lichfield and Coventry	1	8	20	49	5	240	4	9	10
Lincoln . . . . .	3	39	48	36	31	347	3	12	8
Llandaff . . . . .	1	10	30	9	4	45	2	3	6
London . . . . .	1	13	26	16	16	144	1	3	4
Norwich . . . . .	1	47	48	2	22	197	9	7	14
Oxford . . . . .	..	7	18	5	27	36	..	4	
Peterborough . . . . .	..	8	10	1	6	65	..	..	1
Rochester . . . . .	1	3	13	1	4	21	..	1	
Salisbury . . . . .	1	6	37	23	21	93	2	3	3
Winchester . . . . .	..	3	8	16	29	78	..	6	5
Worcester . . . . .	5	4	25	8	3	43	3	3	3
York . . . . .	7	40	52	79	26	265	1	2	5
Sodor and Man . . . .	8	6	.	..	..	1	..	1	1
Total . . . . .	38	385	702	438	281	2552	43	121	132

The number of vicarages of which the improvements have not been returned to the Commissioners is 223.

**BENEFICIUM**, a Latin word, literally "a good deed;" also "a favour," "an act of kindness." This word had several technical significations among the Romans.

When a proconsul, prætor, or quæstor returned to Rome from his province, he first gave in his accounts to the treasury; after which he might also give in the names of such persons as had served under him in the province, and by their conduct had deserved well of the state. To do this was expressed by the phrase, "in beneficiis ad ærarium deferre,"—"to give into the treasury the names of deserving persons;" and in the case of certain officers and persons, this was to be done within thirty days after the proconsul, &c. had given in his accounts. The object of this practice was apparently to recommend such individuals to public notice and attention, and in many cases it would be a kind of introduction to future honours and emoluments. It does not seem quite certain if money was given to those thus recommended, in the time of Cicero. (Cicero, *Ad Divers.* v. 20; *Pro Archia*, 5.) Beneficium, in another sense, means some honour, promotion, or exemption from certain kinds of service, granted by a Roman governor or commander to certain of his soldiers, hence called Beneficarii. (Cæsar, *De Bello Civili*, i. 75; iii. 88; Sueton. *Tiber.* 12.) Numerous inscriptions given in Gruter show how common this practice was: in some of them the title is represented by the initial letters B.F. only; Beneficarius Legati Consularis (li. 4); B.F. Proconsulis (cxxx. 5), &c. Under the emperors, beneficia appear to have signified any kind of favours, privileges, or emoluments granted to a subject by the emperor; and Suetonius observes (*Titus*, 8) that all the Cæsars, in conformity with a regulation of Tiberius, considered that, on their accession to the supreme power, all the grants (beneficia)

of their predecessors required confirmation; but Titus, by one edict, without solicitation, confirmed all grants of previous emperors. The grants made by the emperors, which were often lands, were entered in a book called the Liber Beneficiorum, which was kept by the chief clerk of benefices, under the care of the Comes Rerum Privatarum of the emperor; or it was kept by a person entitled "A Commentariis Beneficiorum," or clerk of the benefices, as we learn from a curious inscription in Gruter (DLXXVIII. 1). This inscription, which is a monumental inscription, is in memory of M. Ulpius Phædimus, who, among other offices, held that of clerk of benefices to Trajan: the monument was erected in the reign of Hadrian, A.D. 131, by Valens Phædimianus, probably one of the same family, who styles himself wardrobe-keeper (a veste).

Beneficium, in the civil law, signifies any particular privilege: thus it is said (*Lig.* i. 4. 3) that the beneficium of the emperor must be interpreted very liberally; and by the Julian law *De bonis Cedendis* a debtor, whose estate was not sufficient to satisfy the demands of his creditors, was said to receive the benefit (beneficium) of this law so far, that he could not be taken to prison after judgment obtained against him. (*Codex*, vii. tit. 71, s. 1. 4.)

Beneficium, among the writers of the middle ages, signified any grant of land from the fiscus, that is, the private possessions of the king or sovereign, or any other person, for life; so called, says Ducange, because it was given out of the mere good will (beneficium) and liberality of the granter. But it is evident, from what we have said, that this kind of grant was so called after the fashion of the grants of the Roman emperors. A beneficiary grant in the middle ages appears to have been properly a grant for life, that is, a grant to the individual, and

Where the impropriation or appropriation of the great tithes is shared between owners of different classes, it is included under each class.

There are some few cases of rectories in which the rector has only a portion of the great tithes, the remainder being the property of a spiritual person or body, or of a lay impropriator; and in Jersey and Guernsey the benefices are merely nominal rectories, the incumbent not being entitled in any case to more than a portion (generally one-third) of the great tithes, the Crown or governor taking the residue; and in some cases the whole goes to the Crown or governor.



accordingly corresponds to *usufructus*, and is opposed to *proprietas*. The name *beneficium*, as applied to a feudal grant, was afterwards changed for that of *feudum*, and, as it is asserted, not before the sixth century; the terms *beneficium* and *feudum* are often used indifferently in writings which treat of feuds. [FEUD.] The English term *Benefice* signifies some church living or preferment. [BENEFICE.] For further remarks on the term *beneficium*, see Ducange, *Glossarium*, &c.; and Hotman, *Commentarius Verborum Juris*, *Opera*, Lugd. fol. 1599.

**BENEFIT OF CLERGY.** The privilege or exemption thus called had its origin in the regard which was paid by the various princes of Europe to the early Christian Church, and in the endeavours of the popes to withdraw the clergy altogether from secular jurisdiction. In England, these attempts, being vigorously resisted by our earlier kings after the Conquest, only succeeded partially and in two particular instances, namely, in procuring, 1. the exemption of places consecrated to religious purposes from arrests for crimes, which was the origin of sanctuaries [SANCTUARY]; and 2. the exemption of clergymen in certain cases from criminal punishment by secular judges. From the latter exemption came the benefit of clergy, which arose when a person indicted for certain offences pleaded that he was a clerk, or clergyman, and claimed his *privilegium clericale*. Upon this plea and claim the ordinary appeared and demanded him; a jury was then summoned to inquire into the truth of the charge, and according to their verdict the accused was delivered to the ordinary either as *acquitted* or *convicted*, to undergo canonical purgation, and then to be discharged or punished according to the result of the purgation. This privilege, however, never extended to high treason nor to offences not capital, and wherein the punishment would not affect the life or limb of the offender (*quæ non tangunt vitam et membrum*). It is singular that previously to the statute 3 & 4 Will. III., which expressly includes them, this privilege of clergy never extended by the English law to women, although it is clear that, by the canon

law, nuns were exempted from temporal jurisdiction.

In earlier periods of the history of this privilege in England, the benefit of clergy was not allowed unless the prisoner appeared in his clerical habit and tonsure to claim it; but in process of time, as the original object of the privilege was gradually lost sight of, this ceremony was considered unnecessary, and the only proof required of the offender's clergy was his showing to the satisfaction of the court that he could read, a rare accomplishment, except among the clergy, previously to the 15th century. The consequence was, that at length all persons who could read, whether clergymen or lay clerks, as they were called in some antient statutes, were admitted to the benefit of clergy in all prosecutions for offences to which the privilege extended. The mode in which this test of reading was applied is thus described by Sir Thomas Smith, in his 'Commonwealth of England,' written in 1565. "The bishop," says he, "must send one with authority under his seal to be a judge in that matter at every gaol delivery. If the condemned man demandeth to be admitted to his book, the judge commonly giveth him a Psalter, and turneth to what place he will. The prisoner readeth so well as he can (God knoweth sometime very slenderly), then he (the judge) asketh of the bishop's commissary, *Legit ut clericus?* The commissary must say *legit* or *non legit*, for these be words formal, and our men of law be very precise in their words formal. If he say *legit*, the judge proceedeth no further to sentence of death; if he say *non*, the judge forthwith proceedeth to sentence."

The clergy, however, do not appear to have universally admitted that the mere fact of a prisoner's ability to read was to be taken as a conclusive proof of his clerical character. A curious case is recorded in the *Year Book*, 34 Hen. VI. 49 (1455), which greatly puzzled the judges. A man indicted of felony claimed the benefit of clergy; upon which the archdeacon of Westminster Abbey was sent for, who showed him a book, in which the felon read well and fluently. Upon hearing this, the court ordered him

to be delivered to the archdeacon on behalf of the ordinary, but the archdeacon refused to take him, alleging that the prisoner was not a clerk. This raised a serious difficulty; and the question was one of particular importance to the prisoner, as the judges deliberated whether he must not of necessity be hanged. He was, however, remanded to prison, and the subject was much discussed by the judges for several terms; but, luckily for the culprit, the conscientious archdeacon being removed, his successor heard the prisoner read, and consented to receive him; whereupon he was delivered to the ordinary, the judges saying "that in *favorem vitæ et libertatis ecclesiæ*, even where a man had once failed to read, and had received sentence of death, they would allow him his benefit of clergy, under the gallows, if he could then read, and was received by the ordinary." Another case is recorded in the 21st year of Edw. IV. (1481), in which a felon read well and audibly in the presence of the whole court; but the ordinary declared "*non legit ut clericus* for divers considerations." Upon which judgment was given that he should be hanged; "And so," says the reporter, "he was *ut audiui*." (*Year Book*, 21 Edw. IV. 21.) But though a felon might claim the benefit of clergy to the last moment of his life, it was an indictable offence to teach him to read for the purpose of saving him. Thus in the 7th Richard II. (1383), the vicar of Round Church in Canterbury was arraigned and tried, "for that by the licence of the jailer there, he had instructed in reading one William Gore, an approver, who at the time of his apprehension was unlearned (*ineruditus in lecturâ*)." (*Dyer's Reports*, p. 206.) It may readily be conceived that questions between the temporal courts and the ordinary would arise as the art of reading became more generally diffused; and it was probably on this account that an express provision was made by the legislature in order in some degree to obviate the occurrence of such difficulties. The statute 4 Henry VII. c. 13 (1488), revived the distinction between actual clergymen and such persons as had accidentally acquired a competent skill in reading, by providing that no per-

son once admitted to the benefit of clergy should a second time be allowed the same privilege, unless he produced his orders; and to mark those who had once claimed the privilege, the statute enacted that all persons, not in orders, to whom it was so allowed, should be marked upon the "brawn of the left thumb" in the court, before the judge, before such person was delivered to the ordinary. After the offender was thus burned in the hand, he was formally delivered to the ordinary, to be dealt with according to the ecclesiastical canons, and to make purgation by undergoing the farce of a canonical trial. This second trial took place before the bishop or his deputy: there was a jury of twelve persons, who gave their verdict on oath; witnesses were examined on oath; the prisoner answered on oath; and twelve compurgators swore that they believed him. On this occasion, though the prisoner had been convicted at common law by the clearest evidence, or had even confessed his guilt, he was almost invariably acquitted. The whole proceeding before the ordinary is characterised by Chief Justice Hobart, at the beginning of the seventeenth century, "as turning the solemn trial of truth by oath into a ceremonious and formal lie." (*Hobart's Reports*, p. 291.) To remove this discreditable abuse of the forms of justice, the statute 18 Eliz. c. 7, enacted that in all cases after an offender had been allowed his clergy, he should not be delivered to the ordinary, but be at once discharged by the court, with a provision that he might be detained in prison for any time not exceeding a year, at the discretion of the judge before whom he was tried.

By various statutes passed in the course of the last century, the court before which an offender was tried and admitted to his clergy were empowered to commute the burning in the hand for transportation, imprisonment, or whipping; and subsequently to the passing of these statutes it is believed that no instance has occurred of a convict being burned in the hand.

The practice of calling upon a convicted person to read in order to prove to the court his title to the benefit of clergy continued until a comparatively late period. A case is mentioned in Kelynge's

*Reports*, p. 51, which occurred in 1666, where the bishop's commissary had deceived the court by reporting, contrary to the fact, that a prisoner could read; upon which Chief Justice Kelynge rebuked him severely, telling him "that he had unpreached more that day than he could preach up again in many days," and fined him five marks. At length the statute of the 5th of Anne, c. 6, enacted that the benefit of clergy should be granted to all those who are entitled to it without requiring them to read; and thus the "idle ceremony of reading," as Mr. Justice Foster justly terms it, was finally abolished.

The absurd and perplexing distinctions which the continuance of this antiquated and worn-out clerical privilege had introduced, having become extremely detrimental to the due administration of justice, it was enacted by one the recent statutes for the consolidation and improvement of the criminal law, commonly called Peel's Acts (namely, 7 & 8 Geo. IV. c. 28, § 6, for England, and 9 Geo. IV. c. 54, § 12, for Ireland), that benefit of clergy with respects to persons convicted of felony shall be abolished. Since the passing of this statute, the subject is of no practical importance whatever; but those who may be inclined to pursue it as a matter of historical curiosity may find the following references useful:—Blackstone's *Commentaries*, vol. iv. chap. 28; Hale's *Pleas of the Crown*, part ii. c. 45; Barrington's *Observations on Ancient Statutes*; Hobart's *Reports*, p. 288.

BENEVOLENCE, a species of forced loan or gratuity, and one of the various arbitrary modes of obtaining supplies of money, which, in violation of Magna Charta, were formerly resorted to by the kings of England. The name implies a free contribution, with or without the condition of repayment; but so early as the reign of Edward IV. the practice had grown into an intolerable grievance. That king's lavish liberality and extravagance induced him to levy benevolences very frequently; and one of the wisest and most popular acts of his successor, Richard III., was to procure the passing of a statute (cap. 2) in the only parliament assembled during his reign, by which

benevolences were declared to be illegal; but this statute is so expressed as not clearly to forbid the solicitation of voluntary gifts, and Richard himself afterwards violated its provisions. Henry VII. exacted benevolences, which were enforced in a very oppressive way. Archbishop Morton, who solicited merchants and others to contribute, employed a piece of logic which obtained the name of "Morton's fork." He told those who lived handsomely, that their opulence was manifested by their expenditure; and those who lived economically, that their frugality must have made them rich: so that no class could evade him. Cardinal Wolsey, among some other daring projects to raise money for Henry VIII., proposed a benevolence, which the citizens of London objected to, alleging the statute of Richard III.; but the answer was, that the act of an usurper could not oblige a lawful sovereign. Elizabeth also "sent out her privy seals," for so the circulars demanding a benevolence were termed; but though individuals were committed to prison for refusing to contribute, she repaid the sums exacted. Lord Coke, in the reign of James I., is said to have at first declared that the king could not solicit a benevolence, and then to have retracted his opinion, and pronounced upon its legality.

The subject underwent a searching investigation during the reign of Charles I., as connected with the limitation of the king's prerogative. That king had appointed commissioners for the collection of a general loan from every individual, and they had private instructions to require not less than a certain proportion of each man's property in land or goods, and had extraordinary powers given them. The name of loan given to this tax was a fiction which the most ignorant could not but detect. Many of the common people were impressed to serve in the navy for refusing to pay; and a number of the gentry were imprisoned. The detention of five knights, who sued the Court of King's Bench for their writ of Habeas Corpus, gave rise to a most important question respecting the freedom of English subjects from arbitrary arrest, and out of the discussion which then arose, and the

contests respecting the levying of ship-money, &c., came the distinct assertion and ultimate establishment of the great principle of English liberty. The 13 Car. II. stat. 1, cap. 4, provides for a voluntary present to his majesty, with a proviso, however, that no aids of that nature can be but by authority of parliament. The Bill of Rights, in 1688, repeats what Magna Charta declared in 1215, that levying of money for or to the use of the crown, by pretence of prerogative, without grant of parliament, for longer time or in any other manner than the same is or shall be granted, is illegal.

(Hallam's *Constitutional History of England*, and Turner's *History of England*.)

**BETROTHMENT.** We sometimes hear of parties being *betrothed* to each other, which means that each has pledged his or her *troth* or *truth* to the other, to enter at some convenient time, fixed or undetermined, into the state of matrimony. It now has seldom any other meaning than that the parties have engaged themselves privately, sometimes, though it is presumed very rarely, in the presence of one or more friends, who might, if necessity of doing so arose, bear testimony to such an engagement having been entered into. Even the rustic ceremonies which heretofore were in use, to give some kind of formality to such contracts, seem almost to have fallen into entire disuse. In ancient times, however, there were engagements of this kind of a very formal nature, and they were not thought unworthy the notice of the great legislators of antiquity. In the laws of Moses there are certain provisions respecting the state of the virgin who is betrothed. In the Roman law, the "sponsalia," or betrothment, is defined to be a "promise of a future marriage." Accordingly *Sponsa* signifies a woman promised in marriage, and *Sponsus* a man who is engaged to marry. *Sponsalia* could take place after the parties were seven years of age. There was no fixed time after betrothment at which marriage necessarily followed, but it might for various reasons be deferred for several years. The sponsalia might be made without the two parties being present at the ceremony. (*Digest*, xxiii. tit. i.)

The canonists speak of *betrothing* and of *marrying*, describing the former as being sponsalia, or espousals, with the *verba de futuro*, the latter with the *verba de presenti*. In England there is no doubt that formal engagements of this kind were usual down to the time of the Reformation. One class of the documents which have descended in the families who have been careful in the preservation of their ancient evidences, are marriage-contracts, which are generally between parents, and set out with stating that a marriage shall be solemnized between certain parties when they attain to a certain age, or at some distant period, as after six months or a year; and amongst the terms of the contract it is not unusual to find stipulations respecting the apparel of the future bride, and the cost of the entertainment which is to be provided on the occasion. When these contracts were entered into by the parents, there is reason to believe that the younger parties solemnly plighted their troth to each other.

At the present day marriage settlements are generally made when the future husband or wife has property, or when both of them have property. The object of the settlement is to secure provision for the children who may be born of the marriage, and generally to make such disposition of the property of the man and of the woman as may have been agreed on. Such settlements always begin by reciting that a marriage between the parties therein mentioned is intended, which is in effect a contract of marriage.

The late Mr. Francis Douce, who was very learned in all matters relating to the popular customs of our own and other nations, describes the ceremony of betrothment (*Illustrations of Shakspeare and of Ancient Manners*, vol. i. p. 108), as having consisted in "the interchangement of rings—the kiss—the joining of hands; to which is to be added the testimony of witnesses." In France, where the ceremony is known by the name of *fiançailles*, the presence of the curé, or of a priest commissioned by him, was essential to the completeness of the contract. In England such contracts were brought under the cognizance of the ecclesiastical law. Complaints are made by a writer

about the time of the Reformation, cited in Ellis's edition of Brand's *Popular Antiquities*, that certain superstitious ceremonies had become connected with these engagements; but Mr. Douce was unable to find in any of the ancient rituals of the church any prescribed form in which this kind of espousals were to be celebrated. The church, however, undertook to punish the violation of the contract. Whoever after betrothment refused to proceed to matrimony, *in facie ecclesiæ*, was liable to excommunication till relieved by public penance. This was taken away by act 26 Geo. II. c. 33, and the aggrieved party was left to seek his remedy by an action at common law for breach of promise of marriage. The church also declared that no kind of matrimonial engagement could be entered into by infants under seven years of age; and that from seven to twelve, and in the case of males to fourteen, they might betroth themselves, but not to be contracted in matrimony. Further, if any betrothment at all took place, it was to be done openly, and this the priests were instructed to urge upon the people as of importance.

Bishop Sparrow (*Rationale on the Common Prayer*, p. 203) regards the marriage service of the Church of England as containing in it both the *verba de futuro* and the *verba de presenti*, or as being in fact both a betrothment and a marriage. The first he finds in the questions, "*Wilt thou take,*" &c., and the answers, "*I will,*"—attributing to the word *will*, perhaps erroneously, the sense of *intention* rather than of *resolution*. The words of contract which follow are the *verba de presenti*.

The northern nations, including the English and the Scotch, called this ceremony by the expressive term *hand-fasting*, or *hand-fastning*. In Germany the parties are called respectively "bride" and "bridegroom," "*braut*" and "*bräutigam*," from the time of the betrothment (*verlobung*) until the marriage, when these designations cease.

BIGAMY, in the canon law, signified either a second marriage with a virgin after the death of the first wife, or a marriage with a widow. It incapacitated men for holy orders; and until the 1 Edw. VI. c. 12, § 16, it was a good counterplea

to the claim of benefit of clergy. (Wooddesson's *Vinerian Lectures*, i. 425.) The word bigamy, which simply signifies "a second marriage," is an irregular compound, formed of the Latin word *bi* (two), and the Greek *γαμ* (*gam*), "marriage." The genuine Greek word is *digâmia* (*δῖγαμία*).

Bigamy, by the English law, consists in contracting a second marriage during the life of a former husband or wife, and the statute 1 James I. c. 11, enacts that the person so offending shall suffer death, as in cases of felony. (Hale's *Pleas of the Crown*, i. 692, fol. ed. 1736.) This statute makes certain exceptions, which it is not necessary to refer to, as it has been repealed by 9 George IV. c. 31, § 22, for England, and 10 Geo. IV. c. 34, § 26, for Ireland, and operates only with respect to offences committed on or before the 30th of June, 1828. The statute last cited enacts, "That if any person being married shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England or elsewhere, such offender and any person aiding him shall be guilty of felony and be punished by transportation for seven years, or by imprisonment (with or without hard labour) for a term not exceeding two years." The statute excepts, first, any second marriage contracted out of England by any other than a subject of his Majesty; second, any person whose husband or wife shall have been continually absent during seven years, and shall not have been known by such person to have been living within that time; third, a person divorced from the bond of the first marriage; fourth, one whose former marriage shall have been declared void by the sentence of any court of competent jurisdiction.

With respect to the third exception, it was determined in a case tried under the stat. 1 James I. c. 11, where a Scotch divorce *a vinculo* was pleaded, that no sentence of any foreign court can dissolve an English marriage *a vinculo*, unless for grounds on which it was liable to be so dissolved in England; and that the words "divorced by any sentence in the ecclesiastical court" (the words of the statute

of James) applied to the sentence of a spiritual court within the limits to which the statute extended. The fourth exception cannot be taken advantage of, if the first marriage has been declared void only collaterally and not directly; or if admitting it to be conclusive, it can be shown to have been obtained fraudulently or collusively. See **MARRIAGE** and **DIVORCE**; and the trial of the Duchess of Kingston before the peers in parliament, in 1776, for bigamy. (Bacon's *Abridgment* by Dodd, titles, "Bigamy" and "Marriage.")

The offence of bigamy consists in going through the form of a second marriage while the first subsists, for the second marriage is only a marriage in form, because a man cannot have two wives or a woman two husbands at once. The main ground for punishing a person who contracts such second marriage, ought to be the injury that is thereby done to the party who is deceived. Yet the law, with the absurd disregard of distinctions which is so common in the penal code of England, punishes in the same way all parties who knowingly contract such second marriage. For instance, if two married persons contract such marriage, they are both liable to the same penalty which is inflicted on a married man who contracts a second marriage with an unmarried woman who believes him to be unmarried. In the former case the two parties sustain no damage by the form; and, with respect to society, they stand pretty nearly on the same footing as two married persons who agree to commit adultery. The only difference is, that they also agree to pass for man and wife by virtue of the marriage ceremony. In the second case the man, by a base fraud, obtains the enjoyment of the woman's person, without running the risk of the penalty attached to the employment of force. As the offence of bigamy may then either be no damage to either of the parties, or a very great injury to one of them, this consideration should affect the amount of punishment.

**BILL BROKER.** [**BROKER.**]

**BILL CHAMBER**, a department of the Court of Session in Scotland, in which one of the judges officiates at all times

during session and vacation. The youngest judge is lord ordinary on the bills during session; the duty is performed by the other judges, with the exception of the two presidents, by weekly rotation during vacation. All proceedings for summary remedies, or for protection against impending proceedings, commence in the Bill Chamber—such as interdicts (or injunctions against courts exceeding their jurisdiction), a procedure which frequently occurred during the recent discussion in the Church of Scotland as to the veto question; suspensions of execution against the property or person, &c. The process of sequestration or bankruptcy issues from this department of the court. By far the greater number of the proceedings are sanctioned by the judge as a matter of form, on the clerks finding that the papers presented ask the usual powers in the usual manner; but where a question of law is involved in the application, it comes into the Court of Session, and is discussed as an ordinary action. The Lord Ordinary on the bills is the representative of the court during vacation. A considerable proportion of his duties are regulated by 1 & 2 Vict. c. 86.

**BILL IN CHANCERY.** [**EQUITY.**]

**BILL IN PARLIAMENT** is the name given to any proposition introduced into either house for the purpose of being passed into a law, after which it is called an act of parliament, or statute of the realm. [**ACT; STATUTE.**]

In modern times a bill does not differ in form from an act, except that when first brought in it often presents blanks for dates, sums of money, &c., which are filled up in its passage through the house. When printed, also, which (with the exception only of naturalization and name bills, which are not printed) it is always ordered to be, either immediately after it has been read a first time, or at some other early stage of its progress, a portion of it, which may admit of being disjoined from the rest, is sometimes distinguished by a different type. But most bills are several times printed in their passage through the two houses. A bill, like an act, has its title, its preamble, usually setting forth the reasons upon which it professes to be founded, and then its series

of enacting clauses, the first beginning with the words—"Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same;"—and each of those that follow with the more simple formula—"And be it further enacted." The advantage of this is, that a bill when made perfect by all its blanks having been filled up, becomes a law at once, without further alteration or remodelling, on receiving the royal assent.

Originally, the bills passed by the two houses were introduced in the form of petitions, and retained that form when they came to receive the royal assent. [PETITION.] The whole of those passed in one session were then, after the parliament rose, submitted to the judges, to be by them put into the proper shape of a law. They were then entered on the Statute Rolls. But it was found that in undergoing this process the acts, as passed by the parliament, were frequently both added to and mutilated. Indeed a great deal of the power of making the law was thus left in the hands of the judges, and of the royal authority, in so far as these learned personages might be under its influence. The Commons remonstrated, reminding the king that they had ever been "as well assenters as petitioners." To remedy this usurpation it was arranged in the 2 Henry V., that the statute roll of the session should always be drawn up before the parliament rose, or as the king said, "that henceforth nothing should be enacted to the petitions of the Commons contrary to their asking, whereby they should be bound without their assent." In the following reign, that of Henry VI., the bill came as now to be prepared in the form of an act, and to receive the distinct assent of the king in the form in which both houses had agreed to it. Mr. May however states (*Usages, &c. of Parliament*) that both Henry VI. and Edward IV. now and then made new provisions in statutes without the sanction of parliament; "but the constitutional form of legislating by bill and statute, agreed to in parliament, undoubtedly had its

origin and its sanction in the reign of Henry VI." (p. 270).

Bills are either public or private. In the introduction of a public bill the first motion made in the House of Lords is that the bill be brought in; but in the House of Commons the member who proposes to introduce the bill must first move that leave be given to bring it in. If that motion is carried, the bill is then either ordered to be brought in by certain members, generally not more than two, of whom the mover is one, or a select committee is appointed for that purpose. When the bill is ready, which it frequently is as soon as the motion for leave to bring it in has been agreed to, it is presented at the bar by one of those members, and afterwards, upon an intimation from the speaker, brought up by him to the table. The next motion is that it be read a first time; and this motion is most frequently made immediately after the bill has been brought up. This being carried, a day is appointed for considering the question that the bill be read a second time. The second reading being carried, it is next moved that the bill be committed, that is, that it be considered clause by clause, either in a committee of the whole house, or, if the matter be of less importance, in a select committee. When the committee have finished their labours, they make their report through their chairman; and the next motion is that the report be received. Besides modifying the original clauses of the bill, it is in the power of the committee, if they think proper, both to omit certain clauses and to add others. Sometimes a bill is ordered to be re-committed, that it may undergo further consideration, or that additional alterations may be made in it. The report of the committee having been received, the next motion is that the bill be read a third time, and when that is carried, there is still a further motion, that the bill do pass. When a bill has passed the House of Lords, it is sent down to the House of Commons by two of the masters in chancery, or if only one is present he is accompanied by the clerk assistant of the parliament; and if the bill concerns the crown or royal family, it is sent down by two of the judges. The

messengers make their obeisances as they advance to the speaker, and, after one of them has read the title of the bill, deliver it to him, desiring that it may be taken into consideration. When an ordinary bill is not sent to the Commons by two of the masters in chancery, the messengers are directed to explain this deviation from the established rules; and in their reply the Commons "trust the same will not be drawn into a precedent for the future." When a bill, on the other hand, is sent up from the Commons to the Lords, it is sent by several members (the Speaker being frequently one), who, having knocked at the door of the Lords' House, are introduced by the usher of the black rod, and then advance to the bar, making three obeisances. The Speaker of the house, who is usually the lord chancellor, then comes down to the bar, and receives the bill, the members who deliver it to him stating its title, and informing him that it is a bill which the Commons have passed, and to which they desire the concurrence of their lordships. A bill thus received by the one house from the other is almost always read a first time; but it does not appear to be a matter of course that it should be so read. It then goes again through the same stages as it has already passed through in the other house.

The bill may be debated on any one of the motions which we have mentioned, and it commonly is so debated more than once. It is usual, however, to take the debate upon the principle of the proposed measure either on the motion for leave to bring in the bill, or on that for the second reading: the details are generally discussed in the committee. Amendments upon the bill, going either to its entire rejection, or to its alteration to any extent, may be proposed on any occasion on which it is debated after it has been brought in. Before it is committed also, certain instructions to the committee may be moved, upon which the committee must act.

After the report of the committee has been received, and the amendments which it purposes agreed to, the Speaker puts the question that the bill so amended be ingrossed; that is to say, written in a

distinct and strong hand on parchment. In this shape it remains till it receives the royal assent; it is not ingrossed a second time in the other house. 'When a bill originates in the Lords, it is ingrossed after the report, and is sent to the Commons in that form; and when it begins in the Commons, the time for ingrossing the bill before it is sent up to the Lords is also after the report.' (May's *Parliament*, p. 284.) Whatever clauses are afterwards added are called *riders*, and must be ingrossed on separate sheets of parchment and attached to it.

Bills of all kinds may originate in either house, except what are called money bills, that is, bills for raising money by any species of taxation, which must always be brought first into the House of Commons. The Commons also will reject any amendment made upon a money bill by the Lords. And the Lords have a standing order (the XC., dated 2nd of March, 1664) against proceeding with any bill for restitution in blood which shall not have originated in their own house: all such acts, and all others of royal grace and favour to individuals, are signed by the king before being laid before parliament, where they are only read once in each house, and cannot be amended, although they may be rejected. [ASSENT, ROYAL.]

When a bill has passed the Commons and is to be sent up to the Lords, the clerk of the Commons writes upon it *Soit baillé aux Seigneurs*; and upon one which has passed the Lords and is to be sent down to the Commons, the clerk of the Lords writes *Soit baillé aux Communs*. If it is afterwards passed by the Commons, the clerk writes upon it *Les Communs ont assentez*. All bills of supply, after being passed by the Lords, are returned to the House of Commons, in which they had originated, and there remain till they are brought to the House of Lords by the Speaker to receive the royal assent: all other bills are deposited with the clerk of the enrolments in the House of Lords till the royal assent is given to them.

A bill, after it has been introduced, may be lost either by the royal assent being refused (of which, however, there



is no instance in recent times), or by a motion for its rejection being carried in any of its stages in its passage through either house, or by any of the motions necessary to advance it on its progress being dropped or withdrawn. The rejection of the bill may be effected by the motion in its favour being simply negatived, or by a counter-motion being carried to the effect that the next reading be deferred till a day by which it is known that parliament will have been prorogued (generally till that day six months, or that day three months), or by the carrying of an amendment entirely opposed to the measure. The motion for carrying it forward on any of its stages may be dropped either by the house not assembling on the day for which the order made respecting that motion stands, or simply by no member appearing to make the motion. When a motion has once been made, it can only be withdrawn by consent of the house.

If a bill has been lost in any of these ways, the rule is that the same measure cannot be again brought forward the same session. There are, however, several remarkable examples of the regulation being entirely disregarded; and sometimes a short prorogation has been made merely to allow a bill which had been defeated to be again introduced.

When a bill which has passed one house has been amended in the other, it must be returned, with the amendments, to be again considered in the house from which it had come; and it cannot be submitted for the royal assent until the amendments have been agreed to by that house. In case of a difference of opinion between the two houses, the rules of proceeding between the two houses, according to Mr. May (*Usage, &c. of Parliament*, p. 255), are as follows:—"Let it be supposed that a bill sent up from the Commons has been amended by the Lords and returned; that the Commons disagree to their amendments, draw up reasons, and desire a conference; that the conference is held, and the bill and reasons are in possession of the House of Lords. If the Lords should be satisfied with the reasons offered, they do not desire another conference, but send a messenger to acquaint the Com-

mons that they do not insist upon their amendments. But if they insist upon the whole or part of their amendments, they desire another conference, and communicate the reasons of their perseverance." The usage of parliament precludes a third conference, and to proceed further a free conference is requisite. Here, instead of a formal communication of reasons, the proceedings partake of the nature of a debate: if neither Lords nor Commons give way at this conference, there is little prospect of terminating the disagreement; but a second free conference may be held if the house in possession of the bill resolves upon making concessions. It may be added that the almost uniform practice in both houses, when it is intended not to insist upon the amendments, has been to move affirmatively "to insist," and then to negative that question. (Hatsell, *Precedents*; May, *Usage, &c. of Parliament*.)

According to the standing orders of the House of Lords (see Order CXCVIII. of 7th of July, 1819), no bill regulating the conduct of any trade, altering the laws of apprenticeship, prohibiting any manufacture, or extending any patent, can be read a second time until a select committee shall have inquired into and reported upon the expediency of the proposed regulations. By the standing orders of the Commons no bill relating to religion or trade can be brought into the house until the proposition shall have been first considered and agreed to in a committee of the whole house; and the house will not proceed upon any bill for granting any money, or for releasing or compounding any sum of money owing to the crown, but in a committee of the whole house. No bill also can pass the house affecting the property of the crown or the royal prerogative without his Majesty's consent having been first signified.

Private bills are such as directly relate only to the concerns of private individuals or bodies of individuals, and not to matters of state or to the community in general. In determining on their merits Parliament exercises judicial as well as legislative functions. In some cases it might be doubtful whether an act ought to be considered a public or a private one; and in these cases a clause is

commonly inserted at the end of the act to remove the doubt. Private bills in passing into laws go through the same stages in both houses of parliament with public bills: but relating as they do for the most part to matters as to which the public attention is not so much alive, various additional regulations are established with regard to them, for the purpose of securing to them in their progress the observation of all whose interests they may affect. No private bill, in the first place, can be introduced into either house except upon a petition stating its object and the grounds upon which it is sought; nor can such petitions be presented after a certain day in each session, which is always fixed at the commencement of the session, and is usually within a fortnight or three weeks thereafter. In all cases the necessary documents and plans must be laid before the house before it will proceed in the matter, and it must also have evidence that sufficient notice in every respect has been given to all parties interested in the measure. To a certain extent the consent of these parties is required before the bill can be passed. For the numerous rules, however, by which these objects are sought to be secured, we must refer to the Standing Orders themselves.

An important respect in which the passage through parliament of a private bill differs from that of a public bill is the much higher amount of fees paid in the case of a private bill to the clerks and other officers of the two houses. Although the high amount of the fees payable on private bills has been the subject of much complaint, and is undoubtedly, in some cases, a very heavy tax, it is to be remembered that the necessary expense of carrying the generality of such bills through parliament must always be very considerable, so long as the present securities against precipitate and unfair legislation shall be insisted on. The expenses of agency, of bringing up witnesses, and the other expenses attending the making application to parliament for a private bill, at present often amount to many times as much as the fees. These fees, on the other hand, are considered to be some check upon unnecessary applications

for private bills, with which it is contended that parliament would otherwise be inundated. The misfortune is, that it is not the most unnecessary applications which such a check really tends to prevent, but only the applications of parties who are poor, which may be just as proper to be attended to as those of the rich.

BILL OF EXCHANGE. [EXCHANGE, BILL OF.]

BILL OF EXCHEQUER. [EXCHEQUER BILL.]

BILL OF HEALTH. [QUARANTINE.]

BILL OF LADING, an acknowledgment signed usually by the master of a trading ship, but occasionally by some person authorised to act on his behalf, certifying the receipt of merchandise on board the ship, and engaging, under certain conditions and with certain exceptions, to deliver the said merchandise safely at the port to which the ship is bound, either to the shipper, or to such other person as he may signify by a written assignment upon the Bill of Lading.

The conditions stipulated on behalf of the master of the ship are, that the person entitled to claim the merchandise shall pay upon delivery of the same a certain specified amount or rate of freight, together with allowances recognised by the customs of the port of delivery, and known under the names of primage and average. Primage amounts in some cases to a considerable per centage (ten or fifteen per cent.) upon the amount of the stipulated freight, but the more usual allowance under this head is a small fixed sum upon certain packages; *e. g.* the primage charge upon a hogshead of sugar brought from the West Indies to London is sixpence. This allowance is considered to be the perquisite of the master of the ship. Average, the claim for which is reserved against the receiver of the goods, consists of a charge divided *pro rata* between the owners of the ship and the proprietors of her cargo for small expenses (such as payments for towing and piloting the ship into or out of harbours), when the same are incurred for the general benefit.

The exceptions stipulated on behalf

the shipowners are explained on the face of the Bill of Lading, and are "the act of God, the king's enemies, fire, and all and every other danger and accidents of the seas, rivers, and navigation, of whatever nature and kind soever excepted."

In every case where shipments are made from this country, one at least of the bills of lading must be written upon a stamp of the value of sixpence. One of the bills (unstamped) is retained by the master of the ship, the others are delivered to the shippers of the goods, who usually transmit to the consignee of the goods one copy by the ship on board which they are laden, and a second copy by some other conveyance. In case the ship should be lost, when the goods are insured, the underwriters require the production of one of the copies of the Bill of Lading on the part of the person claiming under the policy of insurance as evidence at once of the shipment having actually been made, and of the ownership of the goods.

By the act 6 George IV. c. 94, § 2, it is declared "that any person in possession of a Bill of Lading shall be deemed the true owner of the goods specified in it, so as to make a sale or pledge by him of such goods or bill of lading valid, unless the person to whom the goods are sold or pledged has notice that the seller or pledger is not the actual and *bonâ fide* owner of the goods."

The property in the goods represented by a Bill of Lading can be assigned like a bill of exchange by either a blank or a special indorsement, and as, in the event of the first mode being used, the document might accidentally fall into improper hands—a fact which the master of a ship could not reasonably be expected to discover—it is manifestly only justice to shield him from responsibility when acting without collusion. Should he, on the other hand, act either negligently or collusively in the matter, the law will compel him to make good their value to the real owner of the goods.

The stamp duty received on bills of lading in Great Britain for 1843 was 19,518*l.*, and in Ireland 1973*l.* The duty in England and Scotland was reduced from 3*s.* to 6*d.* by 5 & 6 Vict. c. 79, and

in Ireland the duty was reduced from 1*s.* 6*d.* to 6*d.* by 5 & 6 Vict. c. 82. Previous to this reduction, in 1841, the duty in Ireland produced only 1079*l.* The duty for England cannot be given, as the duty was applicable also to protests.

BILL OF RIGHTS is the name commonly given to the statute 1 William and Mary, sess. 2, chap. 2, in which is embodied the Declaration of Rights, presented by both Houses of the Convention to the Prince and Princess of Orange, in the Banqueting-House at Whitehall, on the 13th of February, 1689, and accepted by their Highnesses along with the crown. The Bill of Rights was originally brought forward in the first session of the parliament into which the Convention was transformed; but a dispute between the two Houses with regard to an amendment introduced into the bill by the Lords, naming the Princess Sophia of Hanover and her posterity next in succession to the crown after the failure of issue to King William, which was rejected in the Commons by the united votes of the high church and the republican parties, occasioned the measure to be dropped, after it had been in dependence for two months, and the matter of difference had been agitated in several conferences without effect. The bill was however again brought on immediately after the opening of the next session, on the 19th of October, 1689, and the amendment respecting the Princess Sophia not having been again proposed, it passed both houses, and received the royal assent in the same shape in which it had formerly passed the Commons, with the addition only of a clause inserted by the Lords, which enacted that the kings and queens of England should be obliged, at their coming to the crown, to take the test in the first parliament that should be called at the beginning of their reign, and that if any king or queen of England should embrace the Roman Catholic religion, or marry with a Roman Catholic prince or princess, their subjects should be absolved of their allegiance. This remarkable clause is stated to have been agreed to without any opposition or debate.

The Bill of Rights, after declaring the late king James II. to have done various

acts which are enumerated, utterly and directly contrary to the known laws and statutes and freedom of this realm, and to have abdicated the government, proceeds to enact as follows:—

1. That the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of parliament, is illegal. 2. That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal. 3. That the commission for creating the late court of commissioners for ecclesiastical causes, and all other commissions and courts of the like nature, are illegal and pernicious. 4. That levying of money for or to the use of the crown, by pretence of prerogative, without grant of parliament, for longer time, or in other manner, than the same is or shall be granted, is illegal. 5. That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal. 6. That the raising or keeping of a standing army within the kingdom in time of peace, unless it be with consent of parliament, is against law. 7. That the subjects which are Protestants may have arms for their defence, suitable to their condition, and as allowed by law. 8. That election of members of parliament ought to be free. 9. That the freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament. 10. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. 11. That jurors ought to be duly empannelled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders. 12. That all grants and promises of fines and forfeitures of particular persons, before conviction, are illegal and void. 13. And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliaments ought to be held frequently."

It is added that the Lords and Commons "do claim, demand, and insist upon all and singular the premises as their undoubted rights and liberties; and that no

declarations, judgments, doings, or proceedings, to the prejudice of the people in any of the said premises, ought in anywise to be drawn hereafter into consequence or example."

The act also recognises their Majesties William III. and Mary as King and Queen of England, France, and Ireland, and the dominions thereunto belonging; and declares that the crown and royal dignity of the said kingdoms and dominions shall be held by their said majesties during their lives, and the life of the survivor of them; that the sole and full exercise of the regal power shall be only in and executed by King William, in the names of himself and her majesty, during their joint lives; and that after their decease the crown shall descend to the heirs of the body of the queen, and, in default of such issue, to the Princess Anne of Denmark and the heirs of her body, and, failing her issue, to the heirs of the body of the king.

The Declaration of Rights is understood to have been principally the composition of Lord (then Mr.) Somers, who was a member of the first and chairman of the second of two committees, on whose reports it was founded. The original draft of the Bill of Rights was also the production of his pen. In the latter especially there is very apparent a desire to preserve in the new arrangement as much as possible of the principle of the hereditary succession to the crown. The legislature, for instance, in strong terms expresses its thankfulness that God had mercifully preserved King William and Queen Mary to reign over them "upon the throne of their ancestors;" and the new settlement is cautiously designated merely "a limitation of the crown." Mr. Burke has, from these expressions, contended (in his 'Reflections on the Revolution in France') that the notion of the English people having at the Revolution asserted a right to elect their kings is altogether unfounded. "I never desire," he adds, in repudiation of the opposite opinion, as held by one class of persons professing Whig principles, "to be thought a better Whig than Lord Somers, or to understand the principles of the Revolution better than those by

whom it was brought about, or to read in the Declaration of Rights any mysteries unknown to those whose penetrating style has engraved in our ordinances and our hearts the words and spirit of that immortal law."

The Declaration and Bill of Rights may be compared with the Petition of Right which was presented by Parliament to Charles I. in 1628, and passed by him into a law. [PETITION OF RIGHT.]

**BILL OF SALE**, a deed or writing under seal, evidencing the sale of personal property. In general the transfer of possession is the best evidence of change of ownership, but cases frequently occur in which it is necessary or desirable that the change of property should be attested by a formal instrument of transfer; and in all cases in which it is not intended that the sale shall be followed by delivery, such a solemnity is essential to the legal efficacy of the agreement. The occasions to which these instruments are commonly made applicable are sales of fixtures and furniture in a house, of the stock of a shop, of the good-will of a business (which of course is intransferable by delivery), of an office, or the like. But their most important use is in the transfer of property in ships, which being held in shares, cannot, in general, be delivered over on each change of part ownership. It seems to have been from ancient times the practice, as well in this country as in other commercial states, to attest the sale of ships by a written document; and at the present day a bill of sale is, by the registry acts, rendered necessary to the validity of all transfers of shares in British ships, whether by way of sale or of mortgage.

**BILL OF SIGHT** is an imperfect entry of goods at the custom-house when the importer is not precisely acquainted with their nature or quantity. A Bill of Sight must be replaced by a perfect entry within three days after the goods are landed. (3 & 4 Wm. IV., c. 52, § 24.)

**BILL OF STORE**, a licence granted by the collectors and comptrollers of customs to ship stores and provisions free of duty for consumption and use during the voyage. (3 & 4 Vict. c. 52, § 33 and 34.)

**BILLON**, in coinage, is a composition of precious and base metal, consisting of gold or silver alloyed with copper, in the mixture of which the copper predominates. The word came to us from the French. Some have thought the Latin *bullæ* was its origin, but others have deduced it from *vilis*. The Spaniards still call billon coin *Moneda de Vellon*.

**BILLS OF MORTALITY** are returns of the deaths which occur within a particular district, specifying the numbers that died of each different disease, and showing, in decennial or shorter periods, the ages at which death took place. The London Bills of Mortality were commenced in 1592, after a great plague. The weekly bills were begun in 1603, after another visitation of still greater severity. In London, a parish is said to be within the Bills of Mortality when the deaths occurring within it are supposed to be carried to account by the company of parish clerks. In 1605 the London Bills of Mortality comprised the ninety-seven parishes within the walls, sixteen parishes without the walls, and six contiguous out-parishes in Middlesex and Surrey. In 1626 Westminster was included; and in 1636 Islington, Lambeth, Stepney, Newington, and Rotherhithe. Other additions were made from time to time. The parishes of Marylebone, St. Pancras, Chelsea, and several others, which have become important parts of the metropolis within a recent period, were never included. At present the parishes supposed to be included in the Bills of Mortality comprise the City of London, the City and Liberties of Westminster, the Borough of Southwark, and thirty-four out-parishes in Middlesex and Surrey, the whole containing a population of about 1,350,000.

The manner of procuring returns of the number of deaths and causes of death, as described by Grant, in his 'Observations on the Bills of Mortality,' published in 1662, was as follows:—"When any one dies, then, either by tolling or ringing of a bell, or by bespeaking of a grave of the sexton, the same is known to the searchers corresponding with the said sexton. The searchers hereupon, who are ancient matrons sworn to their office, repair to the

place where the dead corpse lies, and by view of the same, and by other inquiries, they examine by what casualty or disease the corpse died. Hereupon they make their report to the parish clerk, and he, every Tuesday night, carries in an account of all the burials and christenings happening that week to the clerk at the Parish Clerks' Hall. On Wednesday the general account is made up and printed, and on Thursday published, and disposed to the several families who will pay four shillings per annum for them." Maitland, in his 'History of London,' says that the charter of the company of parish clerks strictly enjoins them to make a return of all the weekly christenings and burials in their respective parishes by six o'clock on Tuesdays in the afternoon; and that a bye-law was passed, changing the hour to two, in order "that the king and the lord mayor may have an account thereof the day before publication." The lord mayor, every week, transmitted a copy of the bill to the court. Pepys says, the Duke of Albermarle "shewed us the number of the plague this week, brought in last night from the lord mayor." In 1625 the company of parish clerks obtained a licence from the Star-Chamber for keeping a printing-press at their Hall for printing the bills. So recently as 1837 no improvement had taken place in the mode of collection, or in the value of the statistics of disease and mortality in the metropolis. On the death of an individual within the prescribed limits, intimation was sent to the *searchers*, to whom the undertaker or some relative of the deceased furnished the name and age of the deceased, and the malady of which he had died. No part of this information was properly authenticated, and it might be either true or false. The appointment of searcher usually fell upon old women, and sometimes on those who were notorious for their habits of drinking. The fee which these official characters demanded was one shilling, but in some cases *two* public authorities of this description proceeded to the inspection, when the family of the defunct was defrauded of an additional shilling. They not unfrequently required more than the ordinary fee; and owing to the

circumstances under which they paid their visit, their demands were frequently complied with. In some cases they even proceeded so far as to claim as a perquisite the articles of dress in which the deceased died.

For some time before the Act for the Registration of Births, Deaths, &c. came into operation, the Bills of Mortality were of no value whatever. In fact they ceased to be of use after the last visitation of the plague. The inhabitants of London were no longer apprehensive of a sudden increase of deaths, and the Weekly Bills, once so anxiously regarded, and which, on the appearance of the plague, warned those who could afford it to leave town, sank into neglect. In 1832 the bills reported 28,606 deaths, and in 1842 only 13,142. In 1833, out of 26,577 deaths, the causes of decease were returned as unknown in 887 cases, being 1 in 30; and in 1842, out of 13,142 deaths reported, the cause of death was stated to be unknown in 4638 cases, or less than 1 in 3. 'Searchers' are no longer appointed; and the unscientific diagnosis given in the Bills is usually obtained from the undertaker or sexton at the funeral. Besides this, many of the parishes professedly included in the Bills of Mortality make no returns at all. St. George's, Hanover Square, ceased to send in an account of deaths in 1823. If all the deaths were returned which occur within the limits which the bills profess to comprise, the annual number would be about 33,000, instead of 13,142. In the week ending the 18th of November, 1843. the Bill of Mortality issued by the parish clerks "to the Queen's Most Excellent Majesty, and the Right Hon. the Lord Mayor," stated that "the decrease in the burials reported this week is 149." This very week, however, there was in reality rather an extraordinary increase of mortality, and, for the metropolis, the number of deaths exceeded the average by upwards of 300. In January, 1840, the registrar-general, under 6 & 7 Wm. IV. c. 86, commenced the publication of weekly Bills of Mortality, which are remarkable for their accuracy and their trustworthiness as statistics of disease. The 'cause' of death must be entered in the certificate

of interment, without which it is illegal to enter the body, and the minister officiating is liable to a penalty. The Registrar-General's Bill is now the only true bill; and why the old one should still be published, is only to be accounted for on the supposition that it is obligatory on the parish clerks by the terms of their charter. [REGISTRATION OF BIRTHS, &c.]

**BISHOP**, the name of that superior order of pastors or ministers in the Christian Church who exercise superintendency over the ordinary pastors within a certain district, called their see or diocese, and to whom also belongs the performance of those higher duties of Christian pastors, ordination, consecration (or dedication to religious purposes) of persons or places, and finally excommunication.

The word itself is corrupted Greek. *Ἐπίσκοπος* (*episcopus*) became *episcopus* when the Latins adopted it. They introduced it among the Saxons, with whom, by losing something both at the beginning and the end, it became *piscop*, or, as written in Anglo-Saxon characters, *Byrceop*. This is the modern *bishop*, in which it is probable that the change in the orthography (though small) is greater than in the pronunciation. Other modern languages retain in like manner the Greek term slightly modified according to the peculiar genius of each, as the Italian, *vescovo*; Spanish, *obispo*; and French, *évêque*; as well as the German, *bischof*; Dutch, *bisschop*; and Swedish, *bishop*.

The word *episcopus* literally signifies "an inspector or superintendent;" and the etymological sense expresses even now much of the actual sense of the word. The peculiar character of the bishop's office might be expressed in one word—superintendency. The bishop is the overseer, overlooker, superintendent in the Christian Church, and an exalted station is allotted to him corresponding to the important duties which belong to his office. It was not, however, a term which was invented purposely to describe the new officer which Christianity introduced into the social system. The term existed before, both among the Greeks and Latins, to designate certain civil of-

ficers to whom belonged some species of superintendency. (See Harpocrat. or Suidas in voc. *ἐπίσκοπος*.) Cicero (*Ad Att. lib. vii. ep. 11*) speaks of himself as appointed an *ἐπίσκοπος* in Campania.

It has long been a great question in the Christian Church what kind of superintendency it was that originally belonged to the bishop. This question, as to whether it was originally a superintendency of pastors or of people, may be briefly stated thus:—Those who maintain that it was a superintendency of pastors challenge for bishops that they are an order of ministers in the Christian Church distinct from the order of presbyters, and standing in the same high relation to them that the apostles did to the ordinary ministers in the church; that, in short, they are the successors and representatives of the apostles, and receive at their consecration certain spiritual graces by devolution and transmission from them, which belong not to the common presbyters. This is the view taken of the original institution and character of the bishop in the Roman Catholic Church, in the English Protestant Church, and, we believe, in all churches which are framed on an episcopal constitution. Episcopacy is thus regarded as of divine institution, inasmuch as it is the appointment of Jesus Christ and the apostles, acting in affairs of the church under a divine direction. There are, on the other hand, many persons who contend that the superintendency of the bishop was originally in no respect different from the superintendency exercised by presbyters as pastors of particular churches. They maintain that, if the question is referred to Scripture, we there find that bishop and presbyter are used indifferently to indicate the same persons or class of persons; and that there is no trace in the Scriptures of two distinct orders of pastors; and that if the reference is made to Christian antiquity, we find no trace of such a distinction till about two hundred years after the time of the apostles. The account which they give of the rise of the distinction which afterwards existed between bishops and mere presbyters is briefly this:—

When in the ecclesiastical writers of the first three centuries we read of the

bishops, as of Antioch, Ephesus, Carthage, Rome, and the like, we are to understand the presbyters who were the pastors of the Christian churches in those cities. While the Christians were few in each city, one pastor would be sufficient to discharge every pastoral duty among them; but when the number increased, or when the pastor became enfeebled, assistance would be required by him, and thus other presbyters would be introduced into the city and church of the pastor, forming a kind of council around him. Again, to account for the origin of dioceses or rural districts which were under the superintendency of the pastors, it was argued that it was the cities which first received Christianity, and that the people in the country places remained for the most part heathens or pagans (so called from *pagus*, a country village) after the cities were Christianized; but that nevertheless efforts were constantly being made to introduce Christian truth into the villages around the chief cities, and that, whenever favourable opportunities were presented, the chief pastor of the city encouraged the erection of a church, and appointed some presbyter either to reside constantly in or near to it, or to visit it when his services were required, though still residing in the city, and there assisting the chief pastor in his ministrations. The extent of country which thus formed a diocese of the chief pastor would depend, it is supposed, on the civil distributions of the period; that is, the dioceses of the bishops of Smyrna, or any other ancient city, would be the country of which the inhabitants were accustomed to look to the city for the administration of justice, or in general to regard it as the seat of that temporal authority to which they were immediately subject.

All this is represented as having gone on without any infringement on the rights of the chief pastor, of whom there was a regular series. Lists of them are preserved in many of the more ancient churches, ascending, on what may be regarded sufficient historical testimony, and with few breaks in the continuity, even into the second and first centuries. Bishops are, however, found in churches

for which this high antiquity cannot be claimed. In these cases they are supposed to be either in countries which did not fully receive Christianity in the very earliest times, or that the bishops or chief pastors delegated a portion of that superior authority which they possessed over the other presbyters to the presbyter settled in one of the churches which was originally subordinate. This is supposed to have been the origin of the distinction among the chief pastors of bishops and archbishops, there being still a slight reservation of superintendency and authority in the original over the newly created chief pastors.

If this view of the origin of the episcopal character and office be correct, it will follow that originally there was no essential difference between the bishop and the presbyter, and also that the duties which belong to the pastor of a Christian congregation were performed by the bishop. But when the increase of the number of Christians rendered assistants necessary, and this became a permanent institution, then the chief pastor would divest himself of those simpler and easier duties, which occasioned nevertheless a great consumption of time, as a matter at once of choice and of necessity. Having to think and to consult for other congregations beside that which was peculiarly his own, and to attend generally to schemes for the protection or extension of Christianity, he would have little time remaining for catechizing, preaching, baptizing, or other ordinary duties; and especially when it was added that he had to attend councils, and even was called to assist and advise the temporal governors in the civil and ordinary affairs of state. When Christianity, instead of being persecuted, was countenanced and encouraged by the temporal authorities, it was soon perceived that the bishop would be a very important auxiliary to the temporal authorities; while in ages when few besides ecclesiastical persons had any share of learning, or what we call mental cultivation, it is manifest that the high offices of state, for the performance of the duties of which much discernment and much information were required, must necessarily be filled by



ecclesiastics, who might be expected, as we know to have been the case, to unite spiritual pre-eminence with their high political offices. The Lord High Chancellor of England was always an ecclesiastic, and generally a bishop, to the time of Sir Thomas More, in the reign of Henry VIII.

The functions which belong to the bishop are in all countries nearly the same. We shall speak of them as they exist in the English Church. 1. Confirmation, when children on the threshold of maturity ratify or confirm the engagement entered into by their sponsors at baptism, which is done in the presence of a bishop, who may be understood in this ceremony to recognise or receive into the Christian church the persons born within his diocese. 2. Ordination, or the appointment of persons deemed by him properly qualified, to the office of deacon in the church, and afterwards of presbyter or priest. 3. Consecration of presbyters when they are appointed to the office of bishop. 4. Dedication, or consecration of edifices erected for the performance of Christian services or of ground set apart for religious purposes, as especially for the burial of the dead. 5. Administration of the effects of persons deceased, of which the bishop is the proper guardian, until some person has proved before him a right to the distribution of those effects either as the next of kin or by virtue of the testament of the deceased. 6. Adjudication in questions respecting matrimony and divorce. 7. Institution or collation to vacant churches in his diocese. 8. Superintendence of the conduct of the several pastors in his diocese, in respect of morals, of residence, and of the frequency and proper performance of the public services of the church. And, 9, Excommunication; and, in the case of ministers, deprivation and degradation.

These are the most material of the functions which have been retained by the Christian bishops, or, if we adopt the theory of apostolic succession, which have from the beginning been exercised by them. To these it remains to be added, that in England they are the medium of communication between the

king and the people in respect of all affairs connected with religion; and that they are a constituent part of that great council of the realm which is called Parliament.

Whatever kind of moot, assembly, or council for the advice of the king there was in the earliest times of the English kingdom, the bishops were chief persons in it. The charters of the early Norman kings usually run in the form that they are granted by the assent and advice of the bishops as well as others; and when the ancient great council became moulded into the form of the modern parliament, the bishops were seated, as we now see them, in the Upper House. It is argued that they sit as barons [BARON], but the writ of summons runs to them as bishops of such a place, without any reference to the temporal baronies held by them. Down to the period of the Reformation they were far from being the only ecclesiastical persons who had seats among the hereditary nobility of the land, many abbots and priors having been summoned also, till the houses over which they presided were dissolved, and their office thus extinguished. Henry VIII. created at that time six new bishoprics, and gave the bishops placed in them seats in the same assembly. But before the nation had adjusted itself in its new position, there was a powerful party raised in the country, who maintained that a government of the church by bishops was not accordant to the primitive practice, and who sought to bring back the administration of ecclesiastical affairs to the state in which there was an equality among all ministers, and where the authority was vested in synods and assemblies. Churches upon this model had been formed at Geneva and in Scotland; and when this party became predominant in the parliament of 1642, a bill was passed for removing the bishops from their seats, to which the king gave a reluctant and forced assent. It was soon followed by an entire dissolution of the Episcopal Church. At the Restoration this act was repealed, or declared invalid, and the English bishops have ever since had seats in the House of Lords. They form the Lords Spiritual,

and constitute one of the three estates of the realm, the Lords Temporal and the Commons (the *tiers état*) being the other two. Out of this has arisen the question, now laid at rest, whether a bill has passed the House in a constitutional manner, if it has happened that no Lord Spiritual was present at any of its stages. When the House becomes a court for the trial of a peer charged with a capital offence, the bishops withdraw, it being held unsuitable to the character of ministers of mercy and peace to intermeddle in affairs of blood.

For the execution of many of the duties belonging to their high function they have officers, as chancellors, judges, and officials, who hold courts in the bishop's name.

The election of bishops is supposed by those who regard the order as not distinguished originally from the common presbyter, to have been in the people who constituted the Christian church in the city to which they were called; afterwards, when the number of Christians was greatly increased, and there were numerous assistant presbyters, in the presbyters and some of the laity conjointly. But after a time the presbyters only seem to have possessed the right, and the bishop was elected by them assembled in chapter. The nomination of such an important officer was, however, an object of great importance to the temporal princes, and they so far interfered that at length they virtually obtained the nomination. In England there is still the shadow of an election by the chapters in the cathedrals. When a bishop dies, the event is certified to the king by the chapter. The king writes to the chapter that they proceed to elect a successor. This letter is called the *congé d'élire*. The king, however, transmits to them at the same time the name of some person whom he expects them to elect. If within a short time they do not proceed to the election, the king may nominate by his own authority; if they elect any other than the person named in the king's writ, they incur the severe penalties of a *præmunire*, which includes forfeiture of goods, outlawry, and other evils. The bishop thus elected is confirmed in his

new office under a royal commission, when he takes the oaths of allegiance, supremacy, canonical obedience, and against simony. He is next installed, and finally consecrated, which is performed by the archbishop or some other bishop named in a commission for the purpose, assisted by two other bishops. No person can be elected a bishop who is under thirty years of age.

The inequalities which prevailed in the endowments for bishops in England, have lately been in a great measure removed. Their churches, which are called *cathedrals* (from *cathedra*, a seat of dignity), are noble and splendid edifices, the unimpeachable witnesses remaining among us of the wealth, the splendour, and the architectural skill of the ecclesiastics of England in the middle ages. The cathedral of the Bishop of London is the only modern edifice. The bishop's residence is styled a palace. By 2 & 3 Vict. c. 18, bishops are empowered to raise money on their sees for the purpose of building houses of residence. The act 6 & 7 Wm. IV. c. 77, made provision prospectively for the erection of a residence for the new bishops of Ripon and Manchester.

In this country, and generally throughout Europe, an Archbishop has his own diocese, in which he exercises ordinary episcopal functions like any other bishop in his diocese, yet he has a distinct character, having a superiority and a certain jurisdiction over the bishops in his province, who are sometimes called his suffragans, together with some peculiar privileges. This superiority is indicated in the name. The word or syllable *arch* is the Greek element *αρχ* (which occurs in *αρχή*, *αρχός*, *ἀρχων*, &c.), and denotes precedence or authority. It is used extensively throughout ecclesiastical nomenclature, as may be seen in Du Cange's *Glossary*, where there are the names of many ecclesiastical officers into whose designations this word enters, who were either never introduced into the English church, or have long ceased to exist. The word *arch* also occurs in some civil titles of rank, as arch-duke. Why this word was used peculiarly in ecclesiastical affairs rather than any other term de-

noting superiority, is probably to be explained by the fact that the term *ἀρχιερεύς*, for chief-priest, occurs in the Greek text of the Scriptures. *Patriarch* is a compound of the same class, denoting the chief-father; and is used in ecclesiastical nomenclature to denote a bishop who has authority not only over other bishops, but over the whole collected bishops of divers kingdoms or states; it is analogous in signification to the word *pope* (papa), a bishop who has this extended superintendence. There is an official letter of the Emperor Justinian which is addressed to "John, Archbishop of Rome, and Patriarch;" and several of Justinian's ecclesiastical constitutions are addressed to "Epiphanius, Archbishop of Constantinople, and Patriarch."

Whatever might be the precise functions of the *episcopus* (*ἐπίσκοπος*, bishop), the term itself occurs in the writings of St. Paul, Phil. i. 1, 1 Tim. iii. 2, and elsewhere; but the word *ἀρχιεπίσκοπος*, or archbishop, does not occur till about or after the fourth century. Cyrillus Archiepiscopus Hierosolymitanorum, and Celestinus Archiepiscopus Romanorum, occur under these designations in the proceedings of the council held at Ephesus, A.D. 431. Other terms by which an archbishop is sometimes designated are *primate* and *metropolitan*. The first of these is formed from the Latin word *primus*, "the first," and denotes simple precedence, the first among the bishops. The latter is a Latin word (*metropolitanus*) formed from the Greek, which rendered literally into English would be *the man of the metropolis* or *mother-city*, that is, the bishop who resides in that city which contains the mother-church of all the other churches within the province or district in which he is the metropolitan. The Greek word is *metropolitēs* (*μητροπολίτης*.)

The meaning of the term metropolitan is supposed to point out the origin of the distinction between bishop and archbishop, or, in other words, the origin of the superiority of the archbishop over the bishops in his province, when it is not to be attributed to mere personal assumption, or to be regarded only as an unmeaning title. The way in which Christianity became extended over Eu-

rope was this:—An establishment was gained by some zealous preacher in some one city; there he built a church, performed in it the rites of Christianity, and lived surrounded by a company of clerks engaged in the same design and moving according to his directions. From this central point, these persons were sent from time to time into the country around for the purpose of promoting the reception of Christianity, and thus other churches became founded, offspring or children, to use a very natural figure, of the church from whence the missionaries were sent forth. When one of these subordinate missionaries had gained an establishment in one of the more considerable cities, remote from the city in which the original church was seated, there was a convenience in conferring upon him the functions of a bishop; and the leading design, the extension of Christianity, was more effectually answered than by reserving all the episcopal powers in the hands of the person who presided in the mother-church. Thus other centres became fixed; other bishoprics established; and as the prelate who presided in the first of these churches was still one to whom precedence at least was due, and who still retained in his hands some superintendence over the newer bishops, *archbishop* became a suitable designation. Thus in England, when there was that new beginning of Christianity in the time of Pope Gregory, Augustine, the chief person of the mission, gained an early establishment at Canterbury, the capital of the kingdom of Kent, through the favour of King Ethelbert. There, in this second conversion, as it may be called, the first Christian church was established, and from thence the persons were sent out, who at length Christianized the whole of the southern part of England. Paulinus, in like manner, a few years later, gained a similar establishment in the kingdom of Northumbria, through the zeal of King Edwin, who received Christianity, and built him a church at York, one of his royal cities, which may be regarded as the chief city of Edwin's kingdom. From York Christianity was diffused over the northern parts of England, as from

Canterbury over the southern. It seems to have been the peculiar diligence and dignity of Paulinus which procured for him the title of archbishop, and gave him a province, instead of a diocese only, as was the case with the other members of the Augustinian mission. This was done by special act, under the authority, it is said, of Justus, an early successor of Augustine. But the precedence of the real English metropolitan is acknowledged in two circumstances: in the style, the one being a primate of England, and the other the primate of all England; and in the rank, precedence being always given to the archbishop of Canterbury, and the lord chancellor of England being interposed in processions between the two archbishops. In former times the archbishops of Canterbury were invested by the pope with a legatine authority throughout both provinces. The archbishop can still grant faculties and dispensations in the two provinces. He can confer degrees of all kinds, and can grant special licences to marry at any place and at any time. He licenses notaries. Burn states that previous to the creation of an archbishopric in Ireland in 1152, the archbishop of Canterbury had primacy over that country, and Canterbury was declared, in the time of the two first Norman kings, the metropolitan church of England, Scotland, and Ireland, and the isles adjacent. The archbishop was sometimes styled a patriarch and *orbis Britannici pontifex*. At general councils abroad he had precedence of all other archbishops.

There is evidence sufficient to show that Christianity had made its way long before the time of Gregory among the Roman inhabitants of Britain and the Romanized Britons; and it is not contended that either Scotland or Ireland owed its Christianity to that mission. Wales has no archbishop; whence it seems to be a legitimate inference that the Welsh church is only a fragment of a greater church in which the whole of England and Wales was comprehended, the church, as to what is now called England, being destroyed by the Saxons, who were pagans. Yet some have contended that there was an archbishop at

Caer Leon; and others, on grounds equally uncertain, that bishops, under the denomination of archbishops, were settled in those early times at London and York.

This account of the mode in which Christianity was diffused through many parts of Europe may be perfectly true; but though a specious explanation of the word metropolitan, it is not a true explanation. Under the later empire the name Metropolis was applied to various cities of Asia and conferred on them as a title of rank. The emperors Theodosius and Valentinian conferred on Berytus in Phœnicia the name and rank of a metropolis "for many and sufficient reasons." (*Cod. xi. tit. 22 (21)*). Accordingly the bishop of a metropolis was called metropolitan (*μητροπολίτης*), and the bishop of a city which was under a metropolis was simply called bishop. All the bishops, both metropolitan and others, were subject to the archbishop and patriarch of Constantinople, who received his instructions in ecclesiastical matters from the emperor. (*Cod. i. tit. 3, s. 42, 43*).

The precise amount of superintendence and control preserved by the archbishops over the bishops in their respective provinces, does not seem to be very accurately defined. Yet if any bishop introduces irregularities into his diocese, or is guilty of scandalous immoralities, the archbishop of the province may, as it seems, inquire, call to account, and punish. He may, it is said, deprive. In 1822 the archbishop of Armagh deposed the bishop of Clogher from his bishopric. In disputes between a diocesan and his clergy an appeal lies to the archbishop of the province in all cases except disputes respecting curates' stipends. (1 & 2 Viet. c. 106.) Rolle, a good authority, says that the archbishop may appoint a co-adjutor to one of his suffragans who is infirm or incapable. The right is now confirmed by 6 & 7 Viet. c. 62, intituled 'An Act to provide for the Performance of the Episcopal Functions in case of the Incapacity of any Bishop or Archbishop.' It is under this act that the bishop of Salisbury at present exercises episcopal functions in the diocese of Bath and Wells.

An archbishop has a right to name one of his clerks or chaplains to be provided for by every bishop whom he consecrates. The present practice is for the bishop whom he consecrates, to make over by deed to the archbishop, his executors and assigns, the next presentation of such benefice or dignity which is at the bishop's disposal within his see, as the archbishop may choose. This deed only binds the bishop who grants, and, therefore, if a bishop dies before the option is vacant, the archbishop must make a new option when he consecrates a new bishop. If the archbishop dies before the benefice or dignity is vacant, the next presentation goes to his executors or assigns according to the terms of the grant.

The archbishop also nominates to the benefices or dignities which are at the disposal of the bishops in his province, if not filled up within six months from the time of the avoidance. During the vacancy of a see, he is the guardian of the spiritualities.

Certain of the bishops are nominally officers in the Cathedral of Canterbury, or in the household of the archbishop. "The bishop of London is his provincial dean, the bishop of Winchester his chancellor, the bishop of Lincoln anciently was his vice-chancellor, the bishop of Salisbury his precentor, the bishop of Worcester his chaplain, and the bishop of Rochester (when time was) carried the cross before him." (Burn.) The archbishop has also certain honorary distinctions; he has in his style the phrase "by Divine providence," but the bishop's style runs "by Divine permission;" and while the bishop is only installed, the archbishop is said to be enthroned. The title of "Grace" and "Most Reverend Father in God" is used in speaking and writing to archbishops, and bishops have the title of "Lord" and "Right Reverend Father in God."

The archbishops may nominate eight clerks each to be their chaplains, and bishops six. The archbishop of Canterbury claims the right of placing the crown upon the head of the king at his coronation; and the archbishop of York claims to perform the same office for the queen consort, and he is her perpetual

chaplain. The archbishop of Canterbury is the chief medium of communication between the clergy and the king, and is consulted by the king's ministers in all affairs touching the ecclesiastical part of the constitution; and he generally delivers in parliament what, when unanimous, are the sentiments of the bench of bishops. The two archbishops have precedence of all temporal peers, except those of the blood-royal; and except that the lord chancellor has place between the two archbishops.

The province of the archbishop of York consists of the six northern counties, with Cheshire and Nottinghamshire; to these were added, by act of parliament in the time of Henry VIII., the Isle of Man: in this province he has five suffragans, the bishop of Sodor and Man, the bishop of Durham, the only see in his province of Saxon foundation, the bishops of Carlisle, Chester, and Ripon. Of these, the bishopric of Carlisle was founded by King Henry I. in the latter part of his reign, and the bishopric of Chester by King Henry VIII.; so thinly scattered was the seed of Christianity over the northern parts of the kingdom in the Saxon times. To the above have been added the bishopric of Ripon, created by act of parliament (6 & 7 Wm. IV. c. 77) in 1836, and the bishopric of Manchester, also created by the same act; but a bishop was not to be appointed for Manchester until a vacancy occurred in either the see of St. Asaph or Bangor.

The rest of England and Wales forms the province of the archbishop of Canterbury, in which there are twelve bishoprics of Saxon foundation; and the bishopric of Ely, founded by Henry I.; the bishoprics of Bristol, Gloucester, Oxford, and Peterborough, founded by Henry VIII.; and the four Welsh bishoprics, of which St. David's and Llandaff exhibit a catalogue of bishops running back far beyond the times of St. Augustine. The Welsh bishoprics will be reduced to three by the union of St. Asaph and Bangor whenever a vacancy occurs in either. The twelve English bishoprics of Saxon foundation are London, Winchester, Rochester, Chichester, Salisbury, Exeter, Bath and Wells,

Worcester, Hereford, Lichfield and Coventry, Lincoln, and Norwich.

The dioceses of the two English archbishops, or the districts in which they have ordinary episcopal functions to perform, were remodelled by 6 & 7 Wm. IV. c. 77. The diocese of Canterbury comprises the greater part of the county of Kent, except the city and deanery of Rochester and some parishes transferred by the above act, a number of parishes distinct from each other, and called Peculiars, in the county of Sussex, with small districts in other dioceses, particularly London, which, belonging in some form to the archbishop, acknowledge no inferior episcopal authority. The diocese of the archbishop of York consists of the county of York, except that portion of it included in the new diocese of Ripon, the whole county of Nottingham, with some detached districts.

Exact knowledge of the diocesan division of the country is of general importance as a guide to the depositaries of wills of parties deceased. But all wills which dispose of property in the public funds must be proved in the Prerogative Court of the archbishop of Canterbury; and in cases of intestacy, letters of administration must be obtained in the same court; for the Bank of England acknowledges no other probates or letters of administration.

Lives of all the archbishops and bishops of England and Wales are to be found in an old book entitled *De Præsulibus Angliæ Commentarius*. It is a work of great research and distinguished merit. The author was Francis Godwin, or Goodwin, bishop of Llandaff, and it was first published in 1616. A new edition of it, or rather the matter of which it consists, translated and recast, with a continuation to the present time, would form a useful addition to our literature. There is also an octavo volume, published in 1720, by John le Neve, containing lives of all the Protestant archbishops, but written in a dry and uninteresting manner. Of particular lives there are many, by Strype and others; many of the persons who have held this high dignity having been distinguished by eminent personal qualities, as well as by the exalted station they have occupied.

St. Andrew's is to Scotland what Canterbury is to England; and while the episcopal form and order of the church existed in that country, it was the seat of the archbishop, though till 1470, when the pope granted him the title of archbishop, he was known only as *Episcopus Maximus Scotiæ*. In 1491 the bishop of Glasgow obtained the title of archbishop, and had three bishops placed as suffragans under him. Until about 1466 the archbishop of York claimed metropolitan jurisdiction over the bishops in Scotland.

In Ireland there are two archbishoprics, Armagh and Dublin. The archbishoprics of Tuam and Cashel were reduced to bishoprics by the act 3 & 4 Will. IV. c. 37. Catalogues of the archbishops of Ireland and Scotland may be found in that useful book for ready reference the *Political Register*, by Robert Beatson, Esq., of which there are two editions.

To enumerate all the prelates throughout Christendom to whom the rank and office of archbishop belong would extend this article to an unreasonable length. The principle exists in all Catholic countries, that there shall be certain bishops who have a superiority over the rest, forming the persons next in dignity to the great pastor *pastorum* of the church, the pope. The extent of the provinces belonging to each varies, for these ecclesiastical distributions of kingdoms were not made with foresight, and on a regular plan, but followed the accidents which attended the early fortunes of the Christian doctrine. In Germany, some of the archbishops attained no small portion of political independence and power. Three of them, viz. those of Treves, Cologne, and Mainz, were electors of the empire. In France, under the old regime, there were eighteen archbishoprics, all of which, except Cambray, are said to have been founded in the second, third, and fourth centuries; the foundation of the archbishopric of Cambray was referred to the sixth century. The number of bishops in France was one hundred and four. The French have a very large and splendid work, entitled *Gallia Christiana*, containing an ample history of each province, and of the several subordinate sees comprehended in it, and also of the

abbeys and other religious foundations, with lives of all the prelates drawn up with the most critical exactness. Since the Revolution forty-nine dioceses in France have been suppressed, and only three new ones have been created. The French hierarchy consists at present of fourteen archbishops and sixty-six bishops. According to the 'Metropolitan Catholic Almanac' for 1844, published in the United States, the number of Roman Catholic archbishops in Europe is 108, and of bishops 469, and there are 154 bishops in other parts of the world, making a total of 731 bishops.

In the British colonies the first bishopric created was that of Nova Scotia, in 1787, and the number of bishops in the colonies has been increased by a number of recent creations of sees to fifteen. [BISHOPRIC.] In 1841 a bishop of the United Church of England and Ireland was appointed for Jerusalem. The king of Prussia was the first to suggest the appointment to Queen Victoria, and the right of appointment will be alternately enjoyed by the crowns of Prussia and England; but the archbishop of Canterbury has a veto on the Prussian appointment. The bishop of Jerusalem is for the present a suffragan of the archbishop of Canterbury's; but he cannot exercise any of his functions in the dominions of Great Britain, nor can the persons ordained by him. The act 5 Vict. c. 6, was passed to enable the archbishops of Canterbury and York, and such bishops as they might select, to consecrate a foreign bishop.

On the separation of the North American colonies from the mother-country, a difficulty was felt by those persons who were desirous of observing the forms of the Anglican Church, as persons ordained by the bishops of England are required to take the oath of allegiance, &c. An act was therefore passed (24 Geo. III. c. 35) which relieved them from the necessity of taking such oaths, with the proviso that they could not legally officiate in any part of the British dominions. The American bishops, from the same obstacle, were for some time consecrated by Scotch bishops; but the act 26 Geo. III. c. 84, which dispensed with the oath of allegiance, and rendered only the king's

licence necessary, enabled them to resort to the bishops of the Church of England.

At the present time there are twenty-four bishops of the Protestant Episcopal Church of the United States of America.

The Episcopal church of the United States of North America is said to be a complete picture of the Church of England republicanized. The superior powers of church government are vested in a General or National Convention which meets triennially. The Convention consists of two houses. The bishops sit as a body in their own right and form a separate House. The lower House is composed of lay and clerical delegates. Each diocese is represented by four laymen and four of the clergy, who are elected by local Diocesan Conventions. The lay members of the Diocesan Conventions are elected by their respective congregations or vestries. The General Convention, amongst other things, has the power of revising old or making new canons. It hears and determines charges against bishops; receives and examines testimonials from Diocesan Conventions recommending new bishops, and decides upon their appointment; without the certificate of the General Convention a bishop cannot be consecrated. The sittings of a General Convention usually last about three weeks. At the Convention which assembled at Philadelphia in Oct. 1844, eleven committees were appointed for the transaction of business; there was one committee on matters relating to the admission of new dioceses; and another on the consecration of bishops. At this Convention a canon was passed for regulating the consecration of foreign bishops: such bishops cannot exercise their functions in the United States. At the same Convention "sentence of suspension" was passed on a bishop by the House of Bishops. They adjudged him to be "suspended from all public exercise of the office and functions of the sacred ministry, and in particular from all exercise whatsoever of the office and work of a bishop of the church of God." The resignation of a bishop must in the first instance be accepted by a majority of two-thirds of the lay and clerical deputies of the Convention of his diocese; and it

then requires to be ratified by a majority of both Houses at a General Convention. The title assumed by a bishop in the United States is "Right Reverend."

The bishops of the Methodist Episcopal Church of the United States have no particular province or district. Their time is chiefly spent in attending the different annual conferences of the church.

The Roman Catholic hierarchy in the United States is composed of one archbishop, fifteen bishops, and five coadjutors. The first Roman Catholic bishop in the United States was consecrated in 1790.

*Bishops in partibus.*—This is an elliptical phrase, and is to be supplied with the word *Infidelium*. These are bishops who have no actual see, but who are consecrated as if they had, under the fiction that they are bishops in succession to those who were the actual bishops in cities where Christianity once flourished. Syria, Asia Minor, Greece, and the northern coast of Africa, present many of these extinct sees, some of them the most ancient and most interesting in the history of Christianity. When a Christian missionary is to be sent forth in the character of a bishop into a country imperfectly Christianized, and where the converts are not brought into any regular church order, the pope does not consecrate the missionary as the bishop of that country in which his services are required, but as the bishop of one of the extinct sees, who is supposed to have left his diocese and to be travelling in those parts. So, when England had broken off from the Roman Catholic Church, and yet continued its own unbroken series of bishops in the recognised English sees, it was, for Roman Catholic ecclesiastical affairs, divided into 'districts,' over each of which a bishop has been placed, who is a *bishop in partibus*. When, in the time of King Charles I., Dr. Richard Smith was sent by the pope into England in the character of bishop, he came as bishop of Chalcedon. The London District is superintended by a bishop who is styled the Bishop of Olena; the Eastern District by the Bishop of Ariopolis; the Western District by the Bishop of Pella; the Central District by the Bishop of Cambysopolis; the Lancashire District by the Bishop of Tloa; the

District of York by the Bishop of Trachis; the Northern District by the Bishop of Abydos; and the Welsh District is under a vicar-apostolic, the Bishop of Apollonia. Scotland is divided in a similar manner. Each District in Great Britain is subdivided into Rural Deaneries.

In the Charitable Donations (Ireland) Act (7 & 8 Vict. c. 97) the Roman Catholic prelates are designated for the first time since the Reformation by their episcopal titles. They had been referred to in the bill, when first brought in, as "any person in the said church [of Rome] of any higher rank or order," &c.; and, on the proposition of the government, this was altered to "any archbishop or bishop, or other person in holy orders, of the Church of Rome." In December, 1844, a royal commission was issued constituting the Board of Charitable Bequests in Ireland, and the two Roman Catholic archbishops and bishop who are appointed members of the Board are styled "Most Reverend" and "Right Reverend," and are given precedence according to their episcopal rank.

The English bishops who have been sent to Nova Scotia, to Quebec, and to the East and West Indies, have been named from the countries placed under their spiritual superintendency, or from the city which contains their residence and the cathedral church.

*Suffragan bishops.*—In England, every bishop is, in certain views of his character and position, regarded as a suffragan of the archbishop in whose province he is. But suffragan bishops are rather to be understood as bishops *in partibus* who were admitted by the English bishops before the Reformation to assist them in the performance of the duties of their office. When a bishop filled some high office of state, the assistance of a suffragan was almost essential, and was probably usually conceded by the pope, to whom such matters belonged, when asked for. A catalogue of persons who have been suffragan bishops in England was made by Wharton, a great ecclesiastical antiquary, and is printed in an appendix to a Dissertation on Bishops *in partibus*, published in 1784 by another distinguished church-antiquary, Dr. Samuel Pegge.



' At the Reformation provision was made for a body of suffragans. A suffragan, in the more ordinary sense of the term, is a kind of titular bishop, a person appointed to assist the bishop in the discharge of episcopal duties. The act 26 Henry VIII. c. 14, authorizes each archbishop and bishop to name a suffragan, which is to be done in this manner: he is to present the names of two clerks to the king, one of whom the king is to select. He was no longer to be named from some extinct see, but from some town within the realm. Six and twenty places are named as the seats (nominally) of the suffragan bishops. They were these which follow:—

Thetford,	Marlborough,	Grantham,
Ipswich,	Bedford,	Hull,
Colchester,	Leicester,	Huntingdon,
Dover,	Gloucester,	Cambridge,
Guildford,	Shrewsbury,	Pereth,
Southampton,	Bristol,	Berwick,
Taunton,	Penrith,	St. Germans,
Shaftsbury,	Bridgewater,	and the
Molton,	Nottingham,	Isle of Wight.

This was before the establishment of the six new bishoprics. But every bishop within his province is sometimes spoken of as a suffragan of the archbishop, being originally, in fact, little more. Questions have been raised respecting the origin of the word suffragan, which is by some supposed to be connected with *suffrages* or votes, as if the bishops were the voters in ecclesiastical assemblies; but more probably, if connected with suffrages at all, the term has a reference to their claiming to vote in the election of the archbishop. A great question respecting the right of election of an archbishop of Canterbury, between the suffragans of his province and the canons of Canterbury, arose in the time of King John, and is a principal occurrence in the contest which he waged with the pope and the church.

Very few persons were nominated suffragan bishops under the act Hen. VIII. c. 14. One, whose name was Robert Pursglove, who had been an abbot, and who was a friend to education, was suffragan bishop of Hull. He founded the Grammar School of Tideswell in Derbyshire. He died in 1579, and lies interred in the church of Tideswell, under a sumptuous tomb, on which is his effigy in the episcopal costume, with a long rhyming inscription presenting an account, curious as being contemporary, of the places at which he received his education, and the ecclesiastical offices which in succession he filled.

*Boy-bishop.*—In the cathedral and other greater churches, it was usual on St. Nicholas-day to elect a child, usually one of the children of the choir, bishop, and to invest him with the robes and other insignia of the episcopal office; and he continued from that day (Dec. 6) to the feast of the Holy Innocents (Dec. 28) to practise a kind of mimicry of the ceremonies in which the bishop usually officiated, more for the amusement than to the edification of the people. The custom, strange as it was, existed in the churches on the Continent as well as in England. It may be traced to a remote period. It was countenanced by the great ecclesiastics themselves, and in their foundation they sometimes even made provision for these ceremonies. This was the case with the archbishop of York in the reign of Henry VII., when he founded his college at Rotherham. Little can be said in favour of such exhibitions, but that they served to abate the dreariness of mid-winter. Much may be found collected on this subject in Ellis's edition of Brand's 'Popular Antiquities,' vol. i. pp. 328–336. The custom was finally suppressed by a proclamation of Henry VIII. in 1542.

**BISHOPRIC** is a term equivalent to diocese or see, denoting the whole district through which the bishop's superintendency extends. The final syllable is the Anglo-Saxon *þice*, *region*, which entered in like manner into the composition of one or two other words. The word Diocese is from the Greek *dioekesis* (*διοίκησις*), which literally signifies 'administration.' (See the instances of the use of this word in Dion. Cassius, Index, ed. Reimar.) In the time of the Emperor Constantine and afterwards the word Diocese was used to signify one of the civil divisions of the Empire. The word *See*, in French *siège*, in Italian *sedia*, signifies 'seat,' 'residence,' and is ultimately derived from the Latin *sedes*.

The Italians call the Holy See, La Sedia Apostolica; and the French, Le Saint Siège.

In England there are two archbishoprics, and twenty bishoprics: in Wales, four bishoprics; the Isle of Man forms also a bishopric, but the bishop has no seat in the English parliament.

The basis of the present diocesan distribution of England was laid in the times of the Saxon Heptarchy. At the Conquest there were two archbishoprics and thirteen bishoprics:

Canterbury,	Exeter,
York,	Worcester,
London,	Hereford,
Winchester,	Coventry and Lich-
Chichester,	field,
Rochester,	Lincoln,
Salisbury,	Norwich,
Bath and Wells,	Durham.

The first innovation on this arrangement was made by King Henry I., who, to gratify the abbot of the ancient Saxon foundation at Ely, and to free him from the superintendence of the Bishop of Lincoln, in whose diocese he was, erected Ely into a bishopric, the church of the monastery being made a cathedral. He assigned to it as its diocese the county of Cambridge, and some portion of Norfolk, perhaps as much as had formerly been comprehended within Mercia, for we have no better guide to the exact limits of the ancient Saxon kingdoms than the limitations of the ancient dioceses. This was effected in 1109.

The second was in 1133, near the end of the reign of Henry I., when the see of Carlisle was founded. The diocese, before the alterations effected by 6 & 7 Wm. IV. c. 77, consisted of portions of the counties of Cumberland and Westmoreland, perhaps not before comprehended within any English diocese.

No other change took place till 1541, when King Henry VIII. erected six new bishoprics, facilities for doing so being afforded by the dissolution of the monastic establishments, which placed at the king's disposal large and splendid churches, and great estates, out of which to make a provision for the support of the bishops. These were, 1. Oxford, having

which had previously been included within the diocese of Lincoln. 2. Peterborough: this diocese was also taken out of that of Lincoln, and comprised the county of Northampton and the greater portion of Rutland. 3. Gloucester, having for its diocese the county of Gloucester, which had been previously in the diocese of Worcester. 4. Bristol, to which the city of Bristol and the whole county of Dorset, heretofore belonging to the diocese of Salisbury, were assigned. 5. Chester; to this a very large tract was assigned, namely, the county of Chester, heretofore part of the diocese of Lichfield and Coventry, and the whole county of Lancaster, part of Cumberland, and the archdeaconry of Richmond, all which were before in the diocese of York; and 6. Westminster; the county of Middlesex, which before had belonged to the diocese of London, being assigned to it as a diocese. This last bishopric, however, soon fell. In about nine years, Thirlby, the first and only bishop, was translated to the see of Norwich, and the county of Middlesex was restored to the diocese of London.

From the year 1541 until 1836 no change was made in the diocesan distribution of England. There was at first no proportion among the dioceses; some, as those of York and Lincoln, being of vast extent, and others, as Hereford, Rochester, and Canterbury, small. The change which has taken place in the population of different parts of England heightened the irregularity in respect of the burthen of these sees. Before the passing of 6 & 7 Wm. IV. c. 77, the revenues were not in any degree proportionate to the extent or population of the diocese, as they consisted for the most part of lands settled upon the sees, often in times long before the Conquest, the revenues from which varied greatly, according as the lands lay in places towards which the tide of population had been directed, or the contrary. The act 6 & 7 Wm. IV. c. 77, created two new bishoprics in England (Ripon and Manchester), and provided for the union of the bishopric of Bristol with that of Gloucester. The bishopric of Bristol no longer exists. The bishop is called the

Bishop of Gloucester and Bristol. The new diocese of Ripon did not consequently add to the number of bishoprics. This bishopric is formed out of the dioceses of York and Chester. The same act also provided for the union of the dioceses of Bangor and St. Asaph, and on a vacancy occurring in either of them a bishop of Manchester was to be appointed. But the clause for the severance of the two Welsh sees was repealed by 10 & 11 Vict. c. 108. and the new bishopric of Manchester founded and endowed out of the surplus episcopal revenues at the disposal of the Ecclesiastical Commissioners. The new diocese embraces the entire county of Lancaster, and the Act creates the new archdeaconry of Liverpool. This change was the result of a motion in 1844, in which the government had been defeated by 49 to 37, in the Lords, on a motion by Earl Powis, for repealing the clause in the act which provided for the union of the two sees. But the assent of the crown being refused, the measure was withdrawn, but afterwards carried.

From the *Report of the Commissioners appointed by his Majesty to inquire into the Ecclesiastical Revenues of England and Wales*, published in 1835, we abstract the following return of the revenues of the English sees. The bishoprics are arranged under the archbishoprics to which they respectively belong. For the number of benefices, population, &c. of each see, see *BENEFICE*.

	Net Income.
CANTERBURY . . . . .	£ 19,182
London . . . . .	13,929
Winchester . . . . .	11,151
St. Asaph . . . . .	6,301
Bangor . . . . .	4,464
Bath and Wells . . . . .	5,946
Bristol . . . . .	2,351
Chichester . . . . .	4,229
St. David's . . . . .	1,897
Ely . . . . .	11,105
Exeter . . . . .	2,713
Gloucester . . . . .	2,282
Hereford . . . . .	2,516
Lichfield and Coventry . . . . .	3,923
Lincoln . . . . .	4,542
Llandaff . . . . .	924
Norwich . . . . .	5,395

	Net Income.
Oxford . . . . .	£ 2,648
Peterborough . . . . .	3,103
Rochester . . . . .	1,459
Salisbury . . . . .	3,939
Worcester . . . . .	6,565
YORK . . . . .	12,629
Durham . . . . .	19,066
Carlisle . . . . .	2,213
Chester . . . . .	3,261
Sodor and Man . . . . .	2,555

The important act already quoted not only remodelled the diocesan divisions of England, but provided for a fresh distribution of the revenues of the different bishops according to the following scale :

Archbishops.	
Canterbury . . . . .	£15,000
York . . . . .	10,000
Bishops.	
London . . . . .	10,000
Durham . . . . .	8,000
Winchester . . . . .	7,000
Ely . . . . .	5,500
St. Asaph and Bangor . . . . .	5,200
Worcester . . . . .	5,000
Bath and Wells . . . . .	5,000

The other bishoprics are augmented by fixed contributions out of the revenues of the richer sees, so as to increase their average annual incomes to not less than 4000*l.* nor more than 5000*l.* The bishop of Sodor and Man has 2000*l.* a-year. The surplus revenues are paid into the hands of the Ecclesiastical Commissioners, and constitute what is called the Episcopal Fund; and every seven years, from Jan. 1, 1837, a new return is to be made by them of the revenues of all the bishoprics, and thereupon the scale of episcopal payments is to be revised, so as to preserve the scale fixed upon by the act. The first revision upon new returns of income for 1844 is now making or has just been completed. Provision was also made in this act for a more equal distribution of patronage among the several bishops, proportioned to the relative magnitude and importance of their respective dioceses.

The bishops of London, Durham, and Winchester, rank next to the archbishops; the others rank according to priority of consecration.

While the church of Scotland was episcopal in its constitution it had two archbishoprics, St. Andrew's and Glasgow, and eleven bishoprics, to which, as late as 1633, a twelfth was added, the bishopric of Edinburgh. In the other thirteen sees there is a long and pretty complete catalogue of bishops, running up to the ninth, tenth, eleventh, or twelfth centuries. The eleven antient bishoprics were those of

Aberdeen,	Dumblaine,	Orkney,
Argyle,	Dunkeld,	Ross,
Brechin,	Galloway,	
Caithness,	Moray,	

and the Isles, or Sodor, a see which was formerly within the superintendency of the bishop of Man.

At the Revolution the Presbyterian church of Scotland was acknowledged as the national church: but there is still an Episcopal church in Scotland, the members of which are there in the character of dissenters. The present sees are Aberdeen, Edinburgh, Dunkeld, Ross and Argyle, Glasgow and Brechin. In a letter addressed to the Bishop of Glasgow, dated Fulham, November 21, 1844, the Bishop of London strongly disclaimed jurisdiction over English clergymen officiating in Scotland, and recommended them to pay canonical obedience to the Scottish bishops within whose diocese they were officiating.

Before the passing of 3 & 4 Wm. IV. c. 37, and 4 & 5 Wm. IV. c. 90, there were four archbishoprics and eighteen bishoprics in the Protestant Church of Ireland. The four archiepiscopal provinces were subdivided into thirty-two dioceses, which had been consolidated into eighteen bishoprics at different epochs. At the time of passing the act, by which many were to be extinguished on the death of the existing bishop, there were in the province of

*Armagh*—Meath and Clonmacnoise, Clogher, Down and Connor, Kilmore, Dromore, Raphoe, and Derry.

*Dublin*—Kildare, Ossory, and Ferns and Leighlin.

*Cashel*—Limerick, Cork and Ross, Waterford and Lismore, Cloyne, and Killaloe and Kilfenora.

*Tuam*—Elphin, Clonfert and Kilmacduagh, and Killala and Achonry.

Of these, by the act above-mentioned, the archiepiscopal diocese of Tuam was to be united to that of Armagh, and that of Cashel to Dublin: but the two suppressed archbishoprics were in future to be bishoprics. The diocese of Dromore was to be united to that of Down and Connor; that of Raphoe to Derry; Clogher to Armagh; Elphin to Kilmore; Killala and Achonry to Tuam and Ardagh; Clonfert and Kilmacduagh to Killaloe and Kilfenora; Kildare to Dublin and Glandelagh; Leighlin and Ferns to Ossory; Waterford and Lismore to Cashel and Emly; Cork and Ross to Cloyne. The diocese of Meath and Clonmacnoise, and that of Limerick, remain unaltered. The archbishoprics were to be reduced to two, and the bishoprics to ten. At the present time (Jan. 1845) the reductions contemplated by the act 3 & 4 Wm. IV. have been nearly completed, the number of archbishops being two, and the number of bishops twelve. In 1831 the income of the Irish archbishops and bishops was returned at 151,128*l.*, and the income of the episcopal establishment, as it will exist in future, will be 82,953*l.*, being a saving of 68,175*l.* a-year; which fund is managed by the Ecclesiastical Commissioners of Ireland, and must be dispensed for ecclesiastical and educational purposes.

One archbishop and three bishops represent the Irish Church in the House of Lords. They are changed every session, and the system of rotation, by which all sit in turn, is regulated by 3 Wm. IV. c. 37 (§ 51). The two archbishops sit in each session alternately. The bishops of Meath and Kildare take precedence of all other bishops, and are privy counsellors in right of their sees: the rest take precedence according to priority of consecration.

The Roman Catholic hierarchy in Ireland consists of four archbishops and twenty-two bishops.

The bishopric of Man is traced to Germanne, one of the companions of St. Patrick, in the fifth century; but there are many breaches in the series of bishops from that time to the present. Sodor,

which is supposed to be a Danish term for the Western Isles of Scotland, was under the same bishop till the reign of Richard II., when the Isle of Man having fallen under the English sovereignty, the Islands withdrew themselves, and had a bishop of their own. The nomination of the bishop was in the house of Stanley, earls of Derby, from whom it passed by an heirress to the Murrays, dukes of Athol. This bishopric was declared by an act of 33 Henry VIII. to be in the province of York. The act 6 & 7 Wm. IV. c. 77, actually united (prospectively) the bishopric of Sodor and Man to that of Carlisle; but by 1 Vict. c. 30, it is to continue an independent bishopric. The bishop of Sodor and Man does not sit in the House of Lords.

The Isle of Wight is part of the diocese of Winchester; the isles of Jersey and Guernsey, with the small islands adjacent, are also in the diocese of Winchester; the Scilly Isles are in the diocese of Exeter.

In the colonies, where there are churches dependent on the English episcopal church, bishops have been consecrated and appointed to the several places following: namely, Nova Scotia, Quebec, Toronto, Newfoundland, British Guiana, Jamaica, Barbadoes, Antigua, Calcutta, Madras, Bombay, Australia, Tasmania, New Zealand, Gibraltar, and New Brunswick. Several of these bishoprics have been created by letters patent, and their revenues and jurisdictions are regulated by acts of parliament; but others, as those of New Zealand, Tasmania, Antigua, Gibraltar, &c., are not of royal or parliamentary creation, but have been established by the archbishops and bishops, in concert with or by consent of the ministers of the crown. In 1841 a meeting was held of the archbishops and bishops of England and Ireland at Lambeth Palace, when it was agreed to undertake the charge of funds then raising for the endowment of bishoprics in the colonies, and to become responsible for their application. In no case do they proceed without the concurrence of the government. In 1841, in pursuance of this resolution, the bishopric of New Zealand was created; in 1842, the four bishoprics of Guiana, An-

tigua, Gibraltar, and Tasmania; and in 1844, Newfoundland and New Brunswick. As funds for endowments are raised, bishops will be consecrated for the Cape of Good Hope, Ceylon, and next for Sierra Leone, South Australia, Western Australia, Port Phillip, and for Northern and Southern India. British colonies or dependencies which are not within any diocese are considered to be under the pastoral care of the Bishop of London.

There are thirty-two Roman Catholic archbishops, bishops, coadjutor bishops, and vicars-apostolic in the British Colonies. At Sydney, Quebec, and in Bengal, the Roman Catholic prelates are of the rank of archbishops.

The pope is the bishop of the Christian church of Rome, and claims to be the successor of St. Peter, of whom it is alleged that he was the first bishop of that church, and that to him there was a peculiar authority assigned, not only over all the inferior pastors or ministers of the church, but over the rest of the apostles, indicated to him by the delivery of the keys. The whole of this, the foundation of that superiority which the bishop of Rome has claimed over all other bishops, has furnished matter of endless controversy; and it does not appear that there is any sufficient historical authority for the allegation that St. Peter did act for any permanency as the bishop of that church, or for the six or seven persons named as successively bishops of that church after him. It seems more probable that the superiority enjoyed by that bishop at a very early period over other bishops (which was not universally acknowledged, and strenuously opposed by our own Welsh bishops) resulted from his position in the chief city of the world, and the opportunities which he enjoyed of constant access to those in whom the chief temporal authority was vested.

BLACK-MAIL is the name given to certain contributions formerly paid by landed proprietors and farmers in the neighbourhood of the Highlands of Scotland, of the English and Scottish border, and of other places subjected to the inroads of "Rievers," or persons who stole cattle on a large scale. It was paid sometimes to a neighbouring chief engaging

to keep the property clear of depredation, and frequently to the depredators themselves as a compromise. Spelman attributes the term black to the circumstance of the impost being paid in copper money, and he is followed by Ducange. Its origin has been sought in the German *plagen* to trouble, the root of which is represented by the English word plague. Dr. Jamieson, however, in his 'Etymological Dictionary,' thinks the word was intended simply to designate the moral hue of the transaction. Pennant absurdly supposes that the word mail is a corruption of "meal," in which he presumes the tax to have been paid. (*Tour in Scotland*, ii. 404.) The word mail, however, was used in Scotland to express every description of periodical payment, and it is still a technical term in the law of landlord and tenant. The expression has been used in English legislation in reference to the borders, as in the 43 Eliz. c. 13, § 2: "And whereas now of late time there have been many incursions, roads, robberies, and burning and spoiling of towns, villages, and houses within the said counties, that divers of her majesty's loving subjects within the said counties, and the inhabitants of divers towns there, have been forced to pay a certain rate of money, corn, cattle, or other consideration, commonly there called by the name of *black-mail*, unto divers and sundry inhabiting upon or near the borders, being men of name, and friended and allied with divers in those parts who are commonly known to be great robbers and spoil-takers." In 1567 an act of the Scottish parliament (c. 21) was passed for its suppression in the shires of Selkirk, Roxburgh, Lanark, Dumfries, and Edinburgh. In later times, and especially during the eighteenth century, at about the middle of which it was extinguished, it prevailed solely in the parts of the northern counties which border on the Highlands. The fruitful shire of Murray, separated from the other cultivated counties of Scotland, and in a great measure bordered by Highland districts, was peculiarly subject to the ravages from which this tax afforded a protection, and was called "Murray land, where every gentleman may

take his prey," as being a place where there was little chance of a plunderer stumbling on the property of a brother marauder, and infringing an old Scottish proverb, that "corbies dinna peik out corbies' eyne." In the old practice of the law black-mail seems to have been used to designate every description of illegal extortion. Thus in 1530 Adam Scott, of Tuschelau, is "convicted of art and part of theftuously taking black mail from the time of his entry within the castle of Edinburgh in ward, from John Browne, in Hoprow." He was beheaded. (Pitcairn's *Crim. Tr.* i. 145.\*) In 1550 James Gulane and John Gray, messengers-at-arms, or officers of the law, are accused of apprehending a criminal, and taking black-mail from him for his liberty (Ib. 356\*). Subsequently, and in the vicinity of the Highlands, the practice seems to have been to a certain extent countenanced by the law, as providing to the inhabitants that security from plunder and outrage which the government could not ensure to them. Thus in Sir John Sinclair's 'Statistical Account of Scotland' (*Parish of Strathblane*, xviii. 582), there is an order of the justices of peace of Stirlingshire to enforce payment of certain stipulated sums which the inhabitants were to pay to a neighbouring proprietor for the protection of "their hous goods and geir." Those only who chose to resign the protection afforded were exempted from the corresponding payment. In the same work (*Parish of Killearn*, xvi. 124) there is a contract, so late as the year 1741, executed with all the formalities of law, between James Graham, of Glengyle, on the one part, "and the gentlemen, heritors, and tenants within the shires of Perth, Stirling, and Dunbarton, who are hereto subscribing, on the other part," in which Graham engages to protect them for a mail of 4 per cent. on their valued rents, which it appears he afterwards reduced to 3 per cent. He engages that he "shall keep the lands subscribed for, and annexed to the respective subscriptions, skaitless of any loss to be sustained by the heritors, tenants, or inhabitants thereof, through the stealing and away-taking of their cattle, horses, or sheep, and that for the

space of seven years complete, from and after the term of Whit-Sunday next to come; and for that effect, either to return the cattle so stolen from time to time, or otherways within six months after the theft committed, to make payment to the persons from whom they were stolen, of their true value, to be ascertained by the oaths of the owners, before any judge ordinary [sheriff]; providing always that intimation be made to the said James Graham, at his house in Correilet, or where he shall happen to reside for the time, of the number and marks of the cattle, sheep, or horses stolen, and that within forty-eight hours from the time that the proprietors thereof shall be able to prove by habile witnesses, or their own or their herd's oaths, that the cattle amissing were seen upon their usual pasture within the space of forty-eight hours previous to the intimation."

Within a very few years after the practice had been thus systematized, it was swept away by the proceedings following on the rebellion of 1745. Captain Burt, whose amusing 'Letters from a gentleman in the north of Scotland to his friend in London,' though bearing date in 1754, refer to a period immediately before the rebellion. Troops were stationed in the district to which he refers, the marauders were kept in check, and he describes the isolated acts of depredation then committed as requiring great caution and cunning, the cattle taken in the west being exchanged within the Highlands for those which might be captured towards the east, so that officers of the law, or others in search of them, might have to traverse a vast district of mountain-land before the stolen cattle they might be in search of could be identified (ii. p. 208, *et seq.*). In the Statistical Account already referred to there are many allusions to black-mail and the state of society co-existent with it, which seem to be founded on personal recollection. In the account of the parish of Fortingal in Perthshire there occurs the following sketch:—"Before the year 1745 Ranoch was in an uncivilized, barbarous state, under no check or restraint of laws. As an evidence of this, one of the principal proprietors never could be compelled to pay his debts. Two mes-

sengers were sent from Perth to give him a charge of horning. He ordered a dozen of his retainers to bind them across two hand-barrows, and carry them in this state to the bridge of Cainachan, at nine miles distance. His property in particular was a nest of thieves. They laid the whole country, from Stirling to Coupar of Angus, under contribution, obliging the inhabitants to pay them black-meal, as it is called, to save their property from being plundered. This was the centre of this kind of traffic. In the months of September and October they gathered to the number of about 300, built temporary huts, drank whiskey all the time, settled accounts for stolen cattle, and received balances. Every man then bore arms. It would have required a regiment to have brought a thief from that country."

**BLACK ROD, USHER OF THE,** is an officer of the House of Lords. He is styled the Gentleman Usher of the Black Rod, and is appointed by letters-patent from the crown. His deputy is styled the yeoman usher. They are the official messengers of the Lords, and either the gentleman or yeoman usher summons the Commons to the House of Lords when the royal assent is given to bills. "He executes orders for the commitment of parties guilty of breaches of privilege and contempt, and assists at the introduction of peers and other ceremonies." (May's *Parliament*, p. 156.)

**BLASPHEMY** (in Greek *βλασφημία*, *blasphémia*), a crime which is punished by the laws of most civilized nations, and which has been regarded of such enormity in many nations as to be punished with death. The word is Greek, but it has found its way into the English and several other modern languages, owing, it is supposed, to the want of native terms to express with precision and brevity the idea of which it is the representative. It is, properly speaking, an ecclesiastical term, most of which are Greek, as the term *ecclesiastical* itself, and the terms *baptism*, *bible*, and *bishop*. This has arisen out of the scriptures of the New Testament having been written in Greek, and those of the Old having in remote times been far better known in the Greek translation than in the original Hebrew.

Blasphemy is a compound word, of which the second part (*phe-m*) signifies to speak: the origin of the first part (*blas*) is not so certain; it is derived from *βλάπτω* (*blapto*), to hurt or strike, according to some. Etymologically therefore it denotes speaking so as to hurt; the *using* to a person's face reproachful and insulting expressions. But others derive the first part of the compound from *βλάξ*. (Passow's Schneider.) In this general way it is used by Greek writers, and even in the New Testament; as in 1 Tim. vi. 4, "Whereof cometh envy, strife, railings, evil surmisings," where the word rendered "railings" is in the original "blasphemies." In Eph. iv. 31, "Let all bitterness, and wrath, and anger, and clamour, and evil-speaking be put away from you," where "evil-speaking" represents the "blasphemy" of the original. In a similar passage, Col. iii. 8, the translators have retained the "blasphemy" of the original, though what is meant is probably no more than ordinary insulting or reproachful speech. Thus also in Mark vii. 22, our Saviour himself, in enumerating various evil dispositions or practices, mentions "an evil eye, blasphemy, pride, foolishness," not meaning, as it seems, more than the ordinary case of insulting speech.

Blasphemy in this sense, however it is to be avoided as immoral and mischievous, is not marked as crime; and its suppression is left to the ordinary influence of morals and religion, and not provided for by law. In this sense indeed the word can hardly be said to be naturalized among us, though it may occasionally be found in the poets, and in those prose-writers who exercise an inordinate curiosity in the selection of their terms. But besides being used to denote insulting and opprobrious speech in general, it was used to denote speech of that kind of a peculiar nature, namely, when the object against which it was directed was a person esteemed sacred, but especially when against God. The word was used by the LXX. to represent the קלל of the original

Hebrew, when translating the passage of the Jewish law which we find in Leviticus xxiv. 10-16; this is the first authentic

account of the act of blasphemy being noticed as a crime, and marked by a legislator for punishment:—"And the son of an Israelitish woman, whose father was an Egyptian, went out among the children of Israel, and this son of the Israelitish woman and a man of Israel strove together in the camp: and the Israelitish woman's son blasphemed the name of the Lord, and cursed. And they brought him unto Moses, and they put him in ward, that the mind of the Lord might be showed them. And the Lord spake unto Moses saying, Bring forth him that hath cursed without the camp, and let all that heard him lay their hands upon his head, and let all the congregation stone him. And thou shalt speak unto the children of Israel saying, Whosoever curseth his God shall bear his sin, and he that blasphemeth the name of the Lord he shall surely be put to death, and all the congregation shall certainly stone him; as well the stranger, as he that is born in the land, when he blasphemeth the name of the Lord, shall be put to death." It is said that the Hebrew commentators on the law have some difficulty in defining exactly what is to be considered as included within the scope of the term "blaspheme" in this passage. But it seems from the text to be evidently that loud and vehement reproach, the result of violent and uncontrolled passion, which not unfrequently is vented not only against a fellow-mortal who offends, but at the same time against the majesty and sovereignty of God.

Common sense, applying itself to the text which we have quoted, would at once declare that this, and this only, constituted the crime against which, in the Mosaic code, the punishment of death was denounced. But among the later Jews, other things were brought within the compass of this law; and it was laid hold of as a means of opposing the influence of the teaching of Jesus Christ, and of giving the form of law to the persecution of himself and his followers. Thus to speak evilly or reproachfully of sacred things or places was construed into blasphemy. The charge against Stephen was that he "ceased not to speak blasphemous words against this holy place



and the law" (Acts vi. 13); and he was punished by stoning, the peculiar mode of putting to death prescribed, as we have seen, by the Jewish law for blasphemy. Our Lord himself was put to death as one convicted of this crime: "Again the high-priest asked and said unto him, Art thou the Christ, the son of the blessed? And Jesus said, I am; and ye shall see the Son of Man sitting on the right hand of power, and coming in the clouds of heaven. Then the high-priest rent his clothes and said, What need we any further witnesses? Ye have heard the blasphemy: what think ye? And they all condemned him to be guilty of death" (Mark xiv. 61-64). It was manifest that there was here nothing of violence or passion, nothing of any evil intention essential to constitute such a crime, nothing, indeed, but the declaration of that divine mission on which he had come into the world, and of which his miracles were intended to be the proof.

There are some instances of the use of the term in the New Testament, in which it is not easy to say whether the word is used in its ordinary sense of hurtful, injurious, and insulting speech, or in the restricted, and what may be called the forensic sense. Thus when it is said of Christ or his apostles that they were blasphemed, it is doubtful whether the writers intended to speak of the act as one of more than ordinary reviling, or to charge the parties with being guilty of the offence of speaking insultingly and reproachfully to persons invested with a character of more than ordinary sacredness: and even in the passage about the blasphemy against the Holy Ghost, it appears most probable from the context that blasphemy is there used in the sense of ordinary reviling, though the object against which it was directed gave to such reviling the character of unusual atrocity.

Among the canonists, the definition of blasphemy is made to include the denying of God, or the asserting of anything to be God which is not God,—anything, indeed, in the words of the "Summa Angelica," voce "Blasfemia," which implies "quandam derogationem excellentis bonitatis alicujus et præcipue divinæ;" and this extended application of the term has

been received in most Christian countries, and punishments have been affixed to the offence.

In our own country, by the common law, open blasphemy was punishable by fine and imprisonment, or other infamous corporal punishment. The kind of blasphemy which was thus cognizable is described by Blackstone to be "denying the being or providence of God, contumelious reproaches of our Saviour Christ, profane scoffing at the Holy Scripture, or exposing it to contempt and ridicule" (*Commentaries*, b. iv. c. iv.). All these heads, except the first, seem to spring immediately from the original sense of the word blasphemy, as they are that hurtful and insulting speech which the word denotes. And we suspect that whenever the common law was called into operation to punish persons guilty of the first of these forms of blasphemy, it was only when the denial was accompanied with opprobrious words or gestures, which seem to be essential to complete the true crime of blasphemy. Errors in opinion, even on points which are of the very essence of religion, were referred in England in early times to the ecclesiastics, as falling under the denomination of heretical opinions, to be dealt with by them as other heresies were. There is nothing in the statute-book under the word blasphemy till we come to the reign of King William III. In that reign an act was passed, the title of which is "An Act for the more effectual suppressing of blasphemy and profaneness." We believe that the statute-book of no other nation can show such an extension and comprehension as is given in this statute to the word blasphemy, unless, indeed, a statute of the Scottish parliament, which was passed not long before, viz. the Act of 1695, c. 11. The only other Scottish act is of Charles the Second's reign. The primitive and real meaning of blasphemy, and we may add of profaneness also, was entirely lost sight of, and the act was directed to the restraint of all free investigation of positions respecting things esteemed sacred. The more proper title would have been, "An Act to prevent the investigation of the grounds of belief in Divine revelation, and the nature of the

things revealed ;" for that such is its object is apparent throughout the whole of it : " Whereas many persons have of late years openly avowed and published many blasphemous and infamous opinions contrary to the doctrines and principles of the Christian religion, greatly tending to the dishonour of Almighty God, and may prove destructive to the peace and welfare of this kingdom ; wherefore for the more effectual suppressing of the said detestable crimes, be it enacted, that if any person or persons having been educated in, or at any time having made profession of, the Christian religion within this realm, shall, by writing, printing, teaching, or advised speaking, deny any one of the persons of the Holy Trinity to be God, or shall assert or maintain that there are more gods than one, or shall deny the Christian religion to be true, or the Holy Scriptures of the Old and New Testament to be of divine authority," &c. These are the whole of the offences comprised in this act. The penalties are severe : disqualifications ; incapacity to act as executor or guardian, or to receive legacies ; three years' imprisonment. (Stat. 9 Will. III. c. 35.) If, however, within four months after the first conviction, the offender will renounce his error in open court, he is for that time discharged from all disabilities. The writings alluded to in the preamble were not, in any proper sense of the term, blasphemous. They were, for the most part, we believe universally, the work of sober-minded and well-disposed men, who, however mistaken they might be, were yet in the pursuit of truth, and seeking it in a direction in which it is especially of importance to mankind to find it. To prevent such inquiries by laws such as these is most unwise. There can be no solid conviction where there can be no inquiry. In a state where laws like this are acted on (happily, in this country, it is become a dead letter), Christianity can never have the seat she ought to have, not only in the affections, but in the rational and sober convictions of mankind. What we mean however at present to urge is, that the title of blasphemy in this statute is a palpable misnomer. The delivery either from the pulpit or the press of the results of reflection and inquiry applied

to the divine authority of the Holy Scriptures, or of any particular book included within that term, to the claim of Christianity to be a divine institution, or to the claim of the doctrine of the Trinity to be received as part of Christianity, can never be regarded as blasphemy or profaneness, however in particular instances it may sometimes be accompanied by expressions which may bring the individual using them within the scope of a charge of blasphemy. Blackstone, in his chapter on offences against God and religion, does not treat of this statute in the section headed Blasphemy, but under Apostasy. Indeed, blasphemy, as Blackstone defines it, and profaneness, are still offences at common law, and may be prosecuted as such ; for the statute of William is merely cumulative, as it is termed, and the common law offence, the prosecution and the punishment, remain as they were before the statute. (*R. v. Carlile*, 3 B and A. 161.)

We are surprised that such a statute could have been passed so near our own time ; still more that such a title should have been prefixed to it. As to its main provision it remains in force. But in 1813, the number of persons who openly avowed that they did not consider the doctrine of the Trinity as possessed of sufficient support from the words of Scripture, when truly interpreted, to deserve assent, having greatly increased, and large congregations of them being found in most of the principal towns, several clergymen also of undoubted respectability, learning, and piety having seceded from the church on the ground that this doctrine as professed in the church was without sufficient authority, a bill was introduced into parliament to relieve such persons from the operation of this statute, and it passed without opposition. This act, which is commonly called Mr. Smith's Act, after the name of the late Mr. William Smith, then member for the city of Norwich, by whom it was introduced, is stat. 53 George III. c. 160.

The legal crime of blasphemy and profaneness is made by this statute of King William something entirely different from the crime when considered with reference to religion or morals. Few persons will

charge any guilt upon a man who, in the course of philosophic investigation, is brought at last to doubt respecting any of the great points of religious belief, after an investigation pursued with diligence, and under a sense of the high importance of the subject. Such a charge would be the result of bigotry alone, and would have no corresponding conviction in the heart of the person thus accused. Yet such a person may be morally guilty of blasphemy. He is morally guilty, if he suffer himself to be led to the use of gross and opprobrious expressions, such as are shocking to the common sense and common feelings of mankind, and abhorrent to the minds of all philosophic inquirers, and all persons who, in the spirit of seriousness, are seeking to know the truth in respect of things which are of the last importance to them. Whoever acknowledges the existence of God and his providence, and yet speaks of him, or still more to him, or of and concerning them, in the language of affront, or otherwise, indeed, than with a feeling of reverence correspondent to the dignity and awfulness of the subject, cannot be held morally guiltless: and when there is no such admission, there is at least a decency to be observed in treating or speaking of them which will be observed by all who have any spirit of seriousness, or any just regard for the peace and welfare of society.

At the same time it must also be admitted that a certain freedom must be allowed in respect of the manner in which questions referring to sacred subjects are treated. All things are not really sacred which many agree to call so. The term sacred may be made to cover any opinion however absurd, as witchcraft and the popular superstitions have sometimes taken shelter under it. It will scarcely be denied that it is morally right to attack opinions of this class, even though the mind of a nation is not sufficiently enlightened to discern the absurdity of them, with any weapons, even those of insult and ridicule; and that though the cry of blasphemy may be raised, yet that at the bar of sound reason such a person, so far from being justly chargeable with so odious a crime, may be rendering to the

world the most essential service, by setting the absurdity of the opinion in that clear light in which it admits of being placed, and thus attracting to it the eyes of all observers. But opinions which have better pretension to be called sacred may not improperly be treated with a certain freedom that to those holding them shall be offensive. Very strong things in this way have been said against the doctrine of transubstantiation by Protestant writers, who have not been regarded by their fellow-Protestants as doing more than setting an erroneous doctrine in its true light, though the Roman Catholic will have a different opinion on the matter. So the Almighty Father, as he appears in the system of Christian faith which is called Calvinism, has by some been represented in characters which, to the sincere believer in that system, cannot but have been accounted blasphemous; while by those who hold the system to rest on a mistaken interpretation of Scripture it has been held to be no more than the real character in which that system invests him. There is in fact, when the subject is regarded as one of morals rather than of law, a relative and a positive blasphemy. That is blasphemy to one which is not so to another. And this should teach all persons a forbearance in the application of so odious a term. Strong and forcible expressions have had their use. Satire and ridicule may reach where plain argument will not go: but it behoves every man who ventures on the use of these weapons to consider the intention by which he is influenced, to look upon himself as one who is a debtor in an especial manner to the truth, and who has to satisfy himself that he aims at nothing but the increase of the knowledge and the virtue and happiness of society.

**BLOCKADE, LAW OF.** Whenever a war takes place, it affects in various ways all states which have any connexion with the belligerent powers. A principal part accordingly of the science of international law is that which respects the rights of such neutral states. For obvious reasons this is also the most intricate part of the subject. There is here a general

rule, namely, that the neutral ought not to be at all interfered with, conflicting with a great variety of exceptions, derived from what is conceived to be the right of each of the belligerents to prosecute the object of annoying its enemy, even though (within certain limits) it inflicts injury upon a third party. In the first place there is to be settled the question of what these limits are. It evidently would not do to say that the belligerent shall not be justified in doing anything which may in any way inconvenience a neutral power; for such a principle would go nigh to tie up the hands of the belligerent altogether, inasmuch as almost any hostile act whatever might in this way be construed into an injury by neutral states. They might complain, for instance, that they suffered an inconvenience, when a belligerent power seized upon the ships of its enemy that were on their way to supply other countries with the ordinary articles of commerce. On the other hand, there is a manifest expediency in restricting the exercise of the rights of war, for the sake of the protection of neutrals, to as great an extent as is compatible with the effectual pursuit of the end for which war is waged. Accordingly it has been commonly laid down, that belligerents are not to do anything which shall have a greater tendency to incommode neutrals than to benefit themselves. It is evident however that this is a very vague rule, the application of which must give rise to many questions.

It is by this rule that publicists have endeavoured to determine the extent to which the right of blockade may properly be carried, and the manner in which it ought to be exercised. We can only notice the principal conclusions to which they have come, which indeed, so far as they are generally admitted, are nothing more than a set of rules fashioned on positive international morality (that is, so much of positive morality as states in general agree in recognising) by judicial decision. Accordingly perhaps the most complete exposition of the modern doctrine of blockade may be collected from the admirable judgments delivered during the course of the last war by the late Lord Stowell (Sir William Scott), while

presiding over the High Court of Admiralty, which have been ably reported by Dr. Edwards and Sir Charles Robinson. A very convenient compendium of the law, principally derived from this source, has been given by Mr. Joseph Chitty in his work entitled 'A Practical Treatise on the Law of Nations,' 8vo. Lond. 1812. The various pamphlets and published speeches of Lord Erskine, Mr. Stephen, Mr. Brougham, Lord Ashburton (Mr. Alexander Baring), Lord Sheffield, and others, which appeared in the course of the controversy respecting the Orders in Council, may also be consulted with advantage. To these may be added various articles in volumes xi. xii. xiv. and xix. of the 'Edinburgh Review,' particularly one in volume xix. pp. 290—317, headed "Disputes with America," written immediately before the breaking out of the last war with that country.

The first and the essential circumstance necessary to make a good blockade is, that there be actually stationed at the place a sufficient force to prevent the entry or exit of vessels. Sir William Scott has said (case of the *Vrow Judith*, Jan. 17, 1799), "A blockade is a sort of circumvallation round a place, by which all foreign connexion and correspondence is, as far as human power can effect it, to be entirely cut off." Such a check as this, it is evident, is absolutely necessary to prevent the greatest abuse of the right of blockade. The benefit accruing to a belligerent from blockading its enemy's ports, by which it claims the privilege of seizing any vessel that attempts to touch or has actually touched at such ports, and the inconvenience thereby inflicted upon neutrals, would both, without such a provision, be absolutely unlimited. In point of fact, belligerents have frequently affected, in their declarations of blockade, to overstep the boundaries thus set to the exercise of the right. France, as Mr. Brougham showed in his speech delivered before the House of Commons, 1st April, 1808, in support of the petitions of London, Liverpool, and other towns, against the orders in council, had repeatedly done so both since and previous to the Revolution. She did so in 1739 and in 1756, and also in 1796, in 1797, and in 1800.

But in none of these instances were her pretended blockades either submitted to by neutrals, or even to any considerable extent attempted to be enforced by herself. There can be no doubt that no prize-court would now condemn a vessel captured for the alleged violation of any such mere nominal blockade. It has, however, been decided that the blockade is good although the ships stationed at the place may have been for a short time removed to a little distance by a sudden change of wind, or any similar cause.

The second, and only other circumstance necessary to constitute a blockade which the prize-courts will recognise, is, that the party violating it shall be proved to have been aware of its existence. "It is at all times most convenient," Lord Stowell has said in one of his judgments (see case of the *Rolla*, in Robinson's 'Reports'), "that the blockade should be declared in a public and distinct manner." There ought to be a formal notification from the blockading power to all other countries. Nevertheless this is not absolutely required, and a neutral will not be permitted with impunity to violate a blockade of which the master of the vessel may reasonably be presumed to be aware from the mere notoriety of the fact. Lord Stowell, however, has said that, whereas when a notification has been formally given, the mere act of sailing with a contingent destination to enter the blockaded port if the blockade shall be found to be raised, will constitute the offence of violation, it might be different in the case of a blockade existing *de facto* only.

With regard to neutral vessels lying at the place where the blockade commences, the rule is, that they may retire freely after the notification of the blockade, taking with them the cargoes with which they may be already laden; but they must not take in any new cargo.

The offence of violation is effected either by going into the place blockaded, or by coming out of it with a cargo taken in after the commencement of the blockade. But vessels must not even approach the place with the evident intention of entering if they can effect their object. It would even appear that a vessel will

render itself liable to seizure and condemnation if it can be proved to have set sail with that intention. In such cases however it must be always difficult for the captors to make out a satisfactory case.

After a ship has once violated a blockade, it is considered that the offence is not purged, in ordinary circumstances, until she shall have returned to the port from which she originally set out; that is to say, she may be seized at any moment up to the termination of her homeward voyage. If the blockade however has been raised before the capture, the offence is held to be no longer punishable, and a judgment of restitution will be pronounced.

The effect of a violation of blockade to the offending party when captured is the condemnation usually of both the ship and the cargo. If however it can be shown that the parties to whom the cargo belongs were not implicated in the offence committed by the master of the ship, the cargo will be restored. It has sometimes, on the contrary, happened that the owners of the cargo have been found to be the only guilty parties, in which case the judgment has been for the condemnation of the cargo and the restitution of the ship.

If a place, as generally happens in the case of maritime blockades, be blockaded by sea only, a neutral may carry on commerce with it by inland communications. The neutral vessel may enter a neighbouring port not included in the blockade with goods destined to be carried thence over land into the blockaded place.

When a place has once been notified to be blockaded, a counter notice should always be given by the blockading power when the blockade has ceased. The observance of this formality is obviously conducive to the general convenience, but there are of course no means of punishing a belligerent for its neglect.

In this country a blockade is ordered and declared by the king in council. It is held however that a commander of a king's ship on a station so distant as to preclude the government at home from interfering with the expedition necessary to meet the change of circumstances, may

have authority delegated to him to extend or vary the blockade on the line of coast on which he is stationed. But the courts will not recognise a blockade altered in this manner within the limits of Europe. It appears to be necessary for the sake of the public convenience that the power of declaring a blockade should, as far as possible, be exercised only by the sovereign power in a state; but it would perhaps be going too far to insist that it should in no circumstances be delegated to a subordinate authority. This would seem to be something very like interfering with the internal arrangements of states.

Some very important questions connected with the law of blockade were brought into discussion in the course of the last war by the Berlin decree of Bonaparte and the orders of the king of Great Britain in council.

The Berlin decree, which was issued on the 21st of November, 1806, declared the whole of the British islands in a state of blockade, and all vessels, of whatever country, trading to them, liable to be captured by the ships of France. It also shut out all British vessels and produce both from France and from all the other countries then subject to the authority of the French emperor. By a subsequent decree, issued soon after in aid of this, all neutral vessels were required to carry what were called letters or certificates of origin, that is, attestations from the French consuls of the ports from which they had set out, that no part of their cargo was British. This was the revival of an expedient which had been first resorted to by the Directory in 1796.

There can be no question as to the invalidity of this blockade, according to the recognised principles of the law of nations: the essential circumstance of a good blockade, namely, the presence of a force sufficient to maintain it, was here entirely wanting. And it is proper also to state that a certain representation of the nature of the decree, much insisted upon by some of the writers and pamphleteers in the course of the subsequent discussions, with the view of mitigating its absurdity and violence, that is to say, that it was never attempted to be en-

forced, is now well known not to have been strictly correct. Many vessels of neutrals were actually captured and condemned by the French courts, in conformity with it, during the first few months which followed its promulgation.

The first step in resistance to the Berlin decree was taken by Great Britain on the 7th of January, 1807, while the Whig ministry of which Mr. Fox had been the head was still in office, by an order in council subjecting to seizure all neutral vessels trading from one hostile port in Europe to another with property belonging to an enemy. This order, however, is said to have been extensively evaded; while, at the same time, new efforts began to be made by the French emperor to enforce the Berlin decree. It is admitted that in the course of the months of September and October, 1807, several neutral vessels were captured for violation of that decree; that a considerable alarm was excited among the mercantile classes in this country by these acts of violence; that the premium of insurance rose; and that some suspension of trade took place. (See 'Edin. Rev.' vol. xiv. p. 442, &c.) It is contended by the supporters of the British orders in council, that the effect of the Berlin decree upon the commerce of this country during the months of August, September, and October in particular, was most severely felt. (See Mr. Stephen's 'Speech'.)

In these circumstances the British government, at the head of which Mr. Perceval now was, issued further orders in council, dated the 11th and 21st of November, 1807. These new orders declared France and all its tributary states to be in a state of blockade, and all vessels subject to seizure which were either found to have certificates of origin on board, or which should attempt to trade with any of the parts of the world thus blockaded. All neutral vessels, intended for France or any other hostile country, were ordered in all cases to touch first at some British port, and to pay custom-dues there, after which they were, in certain cases, to be allowed to depart to their destination. In all cases, in like manner, vessels clearing out from a hostile port were, before proceeding farther

on their voyage, to touch at a British port.

The predicament in which neutral countries were placed by this war of edicts was sufficiently embarrassing. The effect of the recent British orders in council is thus distinctly stated by a writer in the 'Edinburgh Review,' vol. xii. p. 229:—"Taken in combination with the Berlin decree, they interdict the whole foreign trade of all neutral nations; they prohibit everything which that decree had allowed; and they enjoin those very things which are there made a ground of confiscation."

By a subsequent decree, issued by Bonaparte from Milan on the 27th of December, 1807, the British dominions in all quarters of the world were declared to be in a state of blockade, and all countries were prohibited from trading with each other in any articles produced or manufactured in the parts of the earth thus put under a ban. Various additional orders in council were also promulgated from time to time, in explanation or slight modification of those last mentioned.

It is asserted by the opponents of this policy of the British government, that the result was a diminution, in the course of the following year, of the foreign trade of this country, to the extent of fourteen millions sterling. It is even contended that, but for some counteracting causes which happened to operate at the same time, the falling off would have been nearly twice as great. (*Edin. Rev.*, vol. xiv. p. 442, &c.)

The principal branch of trade affected was that with America, which was at this time the only great neutral power in existence; and which in that capacity had, previous to the Berlin decree, been an annual purchaser of British manufactures to a large amount, partly for home consumption, but to a much larger extent for the supply of the Continent. Both the Americans, therefore, and the various parties in this country interested in this export trade, exclaimed loudly against the edicts of the two belligerent powers. It appears that the American government, on application to that of France, obtained an assurance which was deemed satis-

factory, though not in an official form, that the Berlin decree would not be put in force against American vessels; but when this was urged as a sufficient reason for the revocation of the English orders in council, the English government refused to pay any attention to it, maintaining that America should insist upon a public renunciation of the obnoxious French decree.

The subject was brought before parliament in March, 1808, by motions made in both houses asserting the illegality of the orders in council. On the 1st of April the merchants of London, Liverpool, and other towns, who had petitioned for the repeal of the orders, on the ground of their injurious operation upon the commercial interests of the country, were heard at the bar by their counsel, Mr. Brougham, whose speech, as has been already mentioned, was afterwards published. The result was, that ministers consented to the institution of an inquiry into the effect of the orders, in the course of which many witnesses were brought forward both by the petitioners and by the ministers in support of their respective views. But no immediate result followed, either from this inquiry, or from a motion made in the House of Commons on the 6th of March, 1809, by Mr. Whitbread, declaratory of the expediency of acquiescing in the propositions made by the government of the United States.

On the 26th of April, however, a new order in council was issued, which, it was contended by the opponents of the policy hitherto pursued, did in fact amount to an abandonment of the whole principle of that policy. On the pretext that the state of circumstances, so far as the Continent was concerned, had undergone a complete change by the insurrection of the Spaniards, the blockade, which had formerly extended to all the countries under the authority of France, was now confined to France itself, to Holland, to part of Germany, and to the north of Italy; and the order which condemned vessels for having certificates of origin on board was rescinded. On the other hand, the interdict against trading with the blockaded ports was apparently made more strict and severe by the revocation

of the liberty formerly given, in certain cases, to neutral vessels to sail for an enemy's port after having first touched at one in Great Britain. Upon this point, however, some important modifications were made by subsequent orders. A system was introduced of licensing certain vessels to proceed to hostile ports after having first touched and paid custom-dues at a British port; and this was eventually carried so far, that at last the number of such licences granted is said to have exceeded 16,000.

The position, however, in which America was still placed was such as almost to force her to go to war either with England or France. In this state of things, in the spring of 1812 a vigorous effort was again made by the opposition in parliament to obtain the entire removal of the orders in council. In the Lords, a motion was made by the Marquis of Lansdowne on the 28th of February for a select committee of inquiry into the effect of the orders, but was negatived by a majority of 135 to 71. On the 3rd of March a similar motion made in the Commons by Mr. Brougham was also rejected by a majority of 216 to 144. On the 3rd of April, however, an order of the prince regent in council appeared in the 'Gazette,' revoking entirely the former orders in so far as regarded America, but only on the condition that the government of the United States should also revoke an order by which it had some time previously excluded British armed vessels from its ports, while it admitted those of France. This conditional revocation being still considered unsatisfactory, Lord Stanley, on the 28th of April, moved in the Commons for a committee of inquiry into the subject generally, and the discussion ended by ministers giving their assent to the motion. Many witnesses were in consequence examined, both by this committee and by another of the Lords, which sat at the same time, having been obtained on the 5th of May on the motion of Earl Fitzwilliam. When the examinations had been brought to a close, Mr. Brougham, on the 16th of June, moved in the Commons, that the crown should be addressed to recall or suspend the orders uncondi-

tionally. At the termination of this discussion ministers intimated that they were prepared to concede the question; and accordingly, on the 23rd of the same month, an unconditional suspension of the orders, in so far as America was concerned, appeared in the 'Gazette.' By this time, however, the government of the United States had declared war, on the ground, as is well known, not only of the orders in council, but of other alleged acts of injustice on the part of the British government.

The policy of the British government in issuing the orders in council of November, 1807, was maintained by its opponents to be wrong, on the double ground that it was both inexpedient and not warranted by the principles of the law of nations. On this latter head it was argued that no violation of international law by one belligerent power could justify the other in pursuing a similar course.

The question, like all others connected with the law of blockade, appears to be one which must be determined chiefly by a reference to the rights of neutral powers, as regulated by the principle already stated, namely, that no neutral power shall be annoyed or incommoded by any warlike operation, which shall not have a greater tendency to benefit the belligerent than to injure the neutral. In this case the benefit which the British government professed to expect from its retaliatory policy, which was the excitement of a spirit of resistance to the original French decree both in neutral countries and among the people of France themselves, was extremely problematical from the first, and turned out eventually to be wholly delusive. On the other hand, the injury to neutrals was certain and of large amount, tending in fact to interdict and, as far as possible, to put a stop to the entire peaceful commercial intercourse of the world.

The orders in council were sometimes defended, for want of better reasons, on a very peculiar ground, namely, on that of the pecuniary advantage which the country derived from the captures made under them, from the increase of port dues which they occasioned, and from the revenue obtained by the licensing system.



In resting the justification of the orders in council upon the ground of their expediency, their defenders of course contended that they were essential to the effective prosecution of the war, and that we were therefore justified in disregarding the injury which they might indirectly inflict upon neutrals. It was anticipated, as we have observed above, in the first place, that the pressure of their operation would excite both the American government, and even the inhabitants of France themselves, and of the various countries of Europe subject to the French emperor, to insist upon the revocation of the Berlin decree. But the effect anticipated was not produced. Neither the people of France, nor of any other portion of Bonaparte's empire, rose or threatened to rise in insurrection on account of the stoppage of trade occasioned by the edicts of the two belligerent powers; and America went to war, not with France, but with us, choosing to reserve the assertion of her claims for wrongs suffered under the Berlin decree to another opportunity, while she determined to resist our orders in council by force of arms. But secondly, it was contended that the policy adopted by the orders in council was necessary to save our commerce from what would otherwise have been the ruinous effects of the Berlin decree. This argument, also, if its validity is to be tried by the facts as they actually fell out, will scarcely appear to be well founded. The preponderance of the evidence collected in the course of the successive inquiries which took place was decidedly in favour of the representations made by the opponents of the orders, who maintained that, instead of having proved any protection or support to our foreign trade, they had most seriously embarrassed and curtailed it. The authors of the orders themselves must indeed be considered to have come over to this view of the matter, when they consented, as they at length did, to their entire repeal.

In the actual circumstances of the present case, the convenient interposition of America, by means of which British manufactured goods were still enabled to find their way in large quantities to the

Continent in spite of the Berlin decree, would seem to have been the last thing at which the government of this country should have taken umbrage, or which it should have attempted to put down. As the French ruler found it expedient to tolerate this interposition, in open disregard of his decree, it surely was no business of ours to set ourselves to cut off a channel of exit for our merchandise, so fortunately left open when nearly every other was shut.

BOARD, a word used to denote, in their collective capacity, certain persons to whom is intrusted the management of some office or department, usually of a public or corporate character. Thus the lords of the treasury and admiralty, the commissioners of customs, the lords of the committee of the privy council for the affairs of trade, &c., are, when met together for the transaction of the business of their respective offices, styled the Board of Treasury, the Board of Admiralty, the Board of Customs, the Board of Trade, &c. The same word is used to designate the persons chosen from among the proprietors to manage the operations of any joint-stock association, who are styled the Board of Directors. In parochial government the guardians of the poor, &c. are called the Board of Guardians, &c. The word *bureau* in France is an equivalent expression.

BONA FIDES and BONA FIDE is an expression often used in the conversation of common life. It is also often in the mouths of lawyers, and it occurs in Acts of Parliament, where (in some cases at least) it means that the acts referred to must not be done to evade the law, or in fraud of the law, as we sometimes express it, following the Roman phraseology (in *fraudem legis*). It appears to be used pursuant to the meaning of the words, in the sense of good faith, which implies the absence of all fraud or deceit. Bona Fides is therefore opposed to fraud, and is a necessary ingredient in contracts, and in many acts which do not belong to contracts. How much fraud may be legally used, or what is the meaning of Bona Fides in any particular case, will depend on the facts. Many things are not legal frauds, and many things are legally done

Bonâ Fide, which the common notions of fair dealing condemn.

The phrase Bona Fides originated with the Romans, and it is opposed to Mala Fides, or Dolus (fraud). The notion of equity (*æquitas*), equality, fair dealing, equal dealing, is another form of expressing Bona Fides. He who possessed the property of another bonâ fide, might, so far as the general rules of law permitted, acquire the ownership of such property by use (*usucapio*). In this case bona fides consisted in believing that his possession originated in a good title, or, as Gaius (ii. 43) expresses it, when the possessor believed that he who transferred the thing to him was the owner.

The Romans classed under the head of bonæ fidei obligationes a great variety of contracts, and also of legal acts, as buying, selling, *mandatum* [AGENT], guardianship, &c. Actions founded on these obligations were called "bonæ fidei actiones," and the legal proceedings were called "bonæ fidei judicia." The name arose from the formula "ex bona fide," which was inserted in the *Intentio*, or that part of the *Prætor's* formula (instruction to the *judex*) which had reference to the plaintiff's claim, and empowered the *judex* to decide according to the equity of the case, *ex fide bona*. Sometimes the expression "*æquus melius*" was used instead of *ex fide bona*. Thus actions founded on contract, or on acts which bore an analogy to contract, were distributed into the two classes of *Conditiones*, or *stricti iudicii*, or *stricti juris actiones*, and *bonæ fidei actiones*, or actions in which the inquiry was about the strict legal rights of the parties and actions in which the general principles of fair dealing were to be taken into the account. The object which was attained by the *bonæ fidei judicia* bears an analogy to the relief which may be sometimes obtained in a Court of Equity in England, when there is none in a Court of Law.

The *Intentio* in the class of actions called *Conditiones* was in this form: *quidquid* (ob eam rem) *Numerium Negidium Aulo Egerio dare facere oportet ex fide bona*—whatever *Numerius Negidius* ought pursuant to good faith to give or do to *Aulus Egerius* (*Gaius*, ii. 47). All

the actions in which this formula is used were actions arising out of contracts or quasi contracts; and not actions founded on delict, nor actions in which the ownership of a thing was in question. By leaving out the expression "ex bona fide" in the *Intentio* just quoted, the action is reduced to an action *stricti juris*. The *bonæ fidei actio*, by virtue of the formula (*quidquid*, &c.), referred to a thing not determined: the *stricti juris actio* might refer to a thing determined, as a particular field or slave, which was the subject of a contract, or to a thing undetermined (*quidquid*). Therefore all indeterminate actions (*incertæ actiones*) were not *bonæ fidei actiones*, but all *bonæ fidei actiones* were *incertæ actiones*.

BONA NOTABILIA. [EXECUTOR.]

BOOK TRADE. The substance of this notice is condensed, with slight alterations here and there, from a 'Postscript' to 'William Caxton: a Biography,' by Mr. Charles Knight, which gives a history of the "Progress of the Press in England." The subject may be divided into five periods:—

I. From the introduction of printing by Caxton to the accession of James I., 1603.

II. From 1603 to the Revolution, 1688.

III. From 1688 to the accession of George III., 1760.

IV. From 1760 to 1800.

V. From 1800 to 1843.

I. One of the earliest objects of the first printers was to preserve from further destruction the scattered manuscripts of the ancient poets, orators, and historians. But after the first half-century of printing men of letters anxiously demanded copies of the ancient classics. The Alduses and Stephenses and Plantins produced neat and compactly printed octavos and duodecimos, instead of the expensive folios of their predecessors. The instant that they did this, the foundations of literature were widened and deepened. They probably at first overrated the demand; indeed, we know they did so, and they suffered in consequence; but a new demand very soon followed upon the first demand for cheap copies of the ancient classics. The first English Bible was bought up and

burnt; those who bought the Bibles contributed capital for making new Bibles, and those who burnt the Bibles by so doing advertised them. The first printers of the Bible were, however, cautious—they did not see the number of readers upon which they were to rely for a sale. In 1540 Grafton printed only 500 copies of his complete edition of the Scriptures: and yet, so great was the rush to this new supply of the most important knowledge, that we have existing 326 editions of the English Bible, or parts of the Bible, printed between 1526 and 1600.

The early English printers did not attempt what the continental printers were doing for the ancient classics. Down to 1540 no Greek book had appeared from an English press. Oxford had only printed a part of Cicero's Epistles; Cambridge, no ancient writer whatever: only three or four old Roman writers had been reprinted, at that date, throughout England. The English nobility were, probably, for more than the first half-century of English printing, the great encouragers of our press: they required translations and abridgments of the classics—versions of French and Italian romances, old chronicles, and helps to devout exercises. Caxton and his successors abundantly supplied these wants, and the impulse to most of their exertions was given by the growing demand for literary amusement on the part of the great. But the priests strove with the laity for the education of the people; and not only in Protestant, but in Catholic countries, were schools and universities everywhere founded. Here, again, was a new source of employment for the press—A, B, C's, or Absies, Primers, Catechisms, Grammars, Dictionaries, were multiplied in every direction. Books became, also, during this period, the tools of professional men. There were not many works of medicine, but a great many of law. The people, too, required instruction in the laws which they were required to obey; and thus the Statutes, mostly written in French, were translated and abridged by Rastell, an eminent law-printer. Even as early as the time of Caxton the press was employed to promulgate new laws.

Taken altogether, the activity of the

press of England, during the first period of our inquiry, was very remarkable. To William Caxton, our first printer, are assigned 64 works.

Wynkyn de Worde, the able assistant and friend of Caxton, produced the large number of 408 books from 1493 to 1535, that is, upon an average, he printed 10 books in each year. To Richard Pynson, supposed to have been an assistant of Caxton, 212 works are assigned, between 1493 and 1531.

From the time of Caxton's press to that of Thomas Hacket, with whose name Dr. Dibdin's work concludes, we have the enumeration of 2926 books. The 'Typographical Antiquities' of Ames and Herbert comes down to a later period. They recorded the names of three hundred and fifty printers in England and Scotland, or of foreign printers engaged in producing books for England, who were working between 1474 and 1600. The same authors have recorded the titles (we have counted with sufficient accuracy to make the assertion) of nearly 10,000 distinct works printed among us during the same period. Many of these works, however, were only single sheets; but, on the other hand, there are doubtless many not here registered. Dividing the total number of books printed during these 130 years, we find that the average number of distinct works produced each year was 75.

Long after the invention of printing and its introduction into England, books were dear. In the 'Privy Purse Accounts of Elizabeth of York,' published by Sir H. Nicolas, we find that, in 1505, twenty pence were given for a 'Primer' and a 'Psalter.' In 1505 twenty pence would have bought half a load of barley, and were equal to six days' work of a labourer. In 1516 'Fitzherbert's Abridgment,' a large folio law-book, the first published, was sold for forty shillings. At that time forty shillings would have bought three fat oxen. Books gradually became cheaper as the printers ventured to rely upon a larger number of purchasers. The exclusive privileges that were given to individuals for printing all sorts of books, during the reigns of Henry VIII., Mary, and Elizabeth—although

they were in accordance with the spirit of monopoly which characterized that age, and were often granted to prevent the spread of books—offer a proof that the market was not large enough to enable the producers to incur the risk of competition. One with another, 200 copies may be estimated to have been printed of each book during the period we have been noticing; we think that proportion would have been quite adequate to the supply of the limited number of readers—to many of whom the power of reading was a novelty unsanctioned by the practice of their forefathers.

II. The second period of the English press, from the accession of James I. to the Revolution, was distinguished by pedantry at one time, to which succeeded the violence of religious and political controversy; and then came the profligate literature of the Restoration. The press was exceedingly active during the politico-religious contest. There is, in the British Museum, a collection of 2000 volumes of Tracts issued between the years 1640 and 1660, the whole number of which several publications amounts to the enormous quantity of 30,000. The number of impressions of new books unconnected with controversial subjects must have been very small during this period.

After the Restoration an act of parliament was passed that only twenty printers should practise their art in the kingdom. We see by a petition to parliament in 1666, that there were only 140 "working printers" in London. They were quite enough to produce the kind of literature which the court required.

At the fire of London, in 1666, the booksellers dwelling about St. Paul's lost an immense stock of books in quires, amounting, according to Evelyn, to the value of 200,000*l.*, which they were accustomed to stow in the vaults of the metropolitan cathedral, and of other neighbouring churches. At that time the people were beginning to read again, and to think;—and as new capital rushed in to replace the consumed stock of books, there was once more considerable activity in printing. The laws that regulated the number of printers soon after fell into disuse, as they had long fallen into con-

tempt. We have before us a catalogue (the first compiled in this country) of "all the books printed in England since the dreadful fire, 1666, to the end of Trinity Term, 1680," which catalogue is continued to 1685, year by year. A great many—we may fairly say one-half—of these books, are single sermons and tracts. The whole number of books printed during the fourteen years from 1666 to 1680, we ascertain, by counting, was 3550, of which 947 were divinity, 420 law, and 153 physic,—so that two-fifths of the whole were professional books; 397 were school-books, and 253 on subjects of geography and navigation, including maps. Taking the average of these fourteen years, the total number of works produced yearly was 253; but deducting the reprints, pamphlets, single sermons, and maps, we may fairly assume that the yearly average of new books was much under 100. Of the number of copies constituting an edition we have no record; probably it must have been small, for the price of a book, as far as we can ascertain it, was considerable. In a catalogue, with prices, printed twenty-two years after the one we have just noticed, we find that the ordinary cost of an octavo was *five shillings*.

III. We have arrived at the third stage of this rapid sketch—from the Revolution to the accession of George III.

This period will ever be memorable in our history for the creation, in great part, of periodical literature. Till newspapers, and magazines, and reviews, and cyclopædias were established, the people, even the middle classes, could not fairly be said to have possessed themselves of the keys of knowledge.

The publication of *intelligence* began during the wars of Charles I. and his Parliament. But the 'Mercuries' of those days were little more than occasional pamphlets. Burton speaks of a "Pamphlet of News." Before the Revolution there were several London papers, regulated, however, by privileges and surreyours of the press. Soon after the beginning of the eighteenth century (1709) London had one daily paper, fifteen three times a week, and one twice a week: this was before a stamp-duty was imposed on papers. After the stamp-duty in 1724

there were three daily papers, six weekly, and ten three times a week. Provincial newspapers had already been established in several places. In 1731, Cave, at his own risk, produced the first Magazine printed in England—the ‘Gentleman’s.’ Its success was so great, that in the following year the booksellers, who could not understand Cave’s project till they knew its value by experiment, set up a rival magazine, ‘The London.’ In 1749 the first Review, ‘The Monthly,’ was started; and in a few years was followed by ‘The Critical.’

The periodical literature of this period greatly reduced the number of merely temporary books; and it had thus the advantage of imparting to our literature a more solid character. Making a proportionate deduction for the pamphlets inserted in the catalogues already referred to, it still appears that the great influx of periodical literature, although constituting a most important branch of literary commerce, had in some degree the effect of narrowing the publication of new books; and perhaps wholesomely so. It appears from a ‘Complete Catalogue of Modern Books published from the beginning of the century to 1756;’—from which “all pamphlets and other tracts” are excluded, that in these fifty-seven years 5280 new works appeared, which exhibits only an average of ninety-three new works each year. It seems probable that the numbers of an edition printed had been increased; for, however strange it may appear, the general prices of the works in this catalogue are as low, if not lower, than in a priced catalogue which we also have of books printed in the years 1702 and 1703. A quarto published in the first half of the last century seems to have averaged from 10s. to 12s. per volume; an octavo, from 5s. to 6s.; and a duodecimo from 2s. 6d. to 3s. In the earlier catalogue we have mentioned, pretty much the same prices exist: and yet an excise had been laid upon paper; and the prices of authorship, even for the humblest labours, were raised. We can only account for this upon the principle, that the publishers of the first half of the eighteenth century knew their trade, and, printing larger numbers, adapted their

prices to the extension of the market. They also, in many cases, lessened their risk by publishing by subscription—a practice now almost gone out of use from the change of fashion, but possessing great advantages for the production of costly books. This was in many respects the golden age for publishers, when large and certain fortunes were made. Perhaps much of this proceeded from the publishers aiming less to produce novelty than excellence—selling *large impressions of few books*, and not distracting the public with their noisy competition in the manufacture of new wares for the market of the hour. Publishers thus grew into higher influence in society. They had long ceased to carry their books to Bristol or Stourbridge fairs, or to hawk them about the country in auctions. The trade of books had gone into regular commercial channels.

IV. The period from the accession of George III. to the close of the eighteenth century, is marked by the rapid increase of the demand for popular literature, rather than by any prominent features of originality in literary production. Periodical literature spread on every side; newspapers, magazines, reviews, were multiplied; and the old system of selling books by hawkers was extended to the rural districts and small provincial towns. Of the *number-books* thus produced, the quality was indifferent, with a few exceptions; and the cost of these works was considerable. The principle, however, was then first developed, of extending the market by coming into it at regular intervals with fractions of a book, so that the humblest customer might lay by each week in a savings-bank of knowledge. This was an important step, which has produced great effects, but which is even now capable of a much more universal application than it has ever yet received. Smollett’s ‘History of England’ was one of the most successful number-books; it sold to the extent of 20,000 copies.

The rapid growth of the publication of new books is best shown by examining the catalogues of the latter part of the eighteenth century, passing over the earlier years of the reign of George III. In the ‘Modern Catalogue of Books,’ from 1792 to the end of 1802, eleven

years, we find that 4096 *new* works were published, exclusive of reprints not altered in price, and also exclusive of pamphlets: deducting one-fifth for reprints, we have an average of 372 new books per year. This is a prodigious stride beyond the average of 93 per year of the previous period. From some cause or other, the selling-price of books had increased, in most cases 50 per cent., in others 100 per cent. The 2s. 6d. duodecimo had become 4s.; the 6s. octavo, 10s. 6d.; and the 12s. quarto, 1l. 1s. It would appear from this that the exclusive market was principally sought for new books; that the publishers of novelties did not rely upon the increasing number of readers; and that the periodical works constituted the principal supply of the many. The aggregate increase of the commerce in books must, however, have become enormous, when compared with the previous fifty years.

V. Of the last period—the most remarkable for the great extension of the commerce in books—we shall present the accounts of the first 27 years collectively, and of the last 16 years in detail.

The number of new publications issued from 1800 to 1827, including reprints altered in size and price, but excluding pamphlets, was, according to the London catalogue, 19,860. Deducting one-fifth for the reprints, we have 15,888 new books in 27 years; showing an average of 588 new books per year, being an increase of 216 per year over the last 11 years of the previous century. Books, however, were still rising in price. The 4s. duodecimo of the former period became 6s., or was converted into a small octavo at 10s. 6d.; the 10s. 6d. octavo became 12s. or 14s., and the guinea quarto very commonly two guineas. The demand for new books, even at the very high cost of those days, was principally maintained by Reading Societies and Circulating Libraries. When these new modes of diffusing knowledge were first established, it was predicted that they would destroy the trade of publishing. But the Reading Societies and the Circulating Libraries, by enabling many to read new books at a small expense, created a much larger market than the de-

sires of individual purchasers for ephemeral works could have formed; and a very large class of books was expressly produced for this market.

But a much larger class of book-buyers had sprung up, principally out of the middle ranks. For these a new species of literature had to be produced,—that of books conveying sterling information in a popular form, and published at a very cheap rate. In the year 1827 ‘*Constable’s Miscellany*’ led the way in this novel attempt; in the same year the Society for the Diffusion of Useful Knowledge, which had been formed in November, 1826, commenced its operations, and several publishers of eminence soon directed their capital into the same channels. Subsequently editions of our great writers have been multiplied at very reasonable prices; and many a tradesman’s and mechanic’s house now contains a well selected stock of books, which, through an annual expenditure of 2l. or 3l., has brought the means of intellectual improvement, and all the tranquil enjoyment that attends the practice of family reading, home to a man’s own fireside.

The increasing desire for knowledge among the masses of the people was, however, not yet supplied. In 1832 the ‘*Penny Magazine*’ of the Society for the Diffusion of Useful Knowledge, and ‘*Chambers’s Journal*’ commenced to be published; and subsequently the ‘*Saturday Magazine*.’ The ‘*Penny Sheet*’ of the reign of Queen Anne was revived in the reign of William IV., with a much wider range of usefulness. It was said by some that the trade in books would be destroyed. They asserted also that the rewards of authorship would be destroyed, necessarily, at the same time. ‘*The Penny Cyclopædia*’ of the Society for the Diffusion of Useful Knowledge was deemed the most daring attempt at this double destruction. That work has returned about 150,000l. to the commerce of literature, and 40,000l. have been distributed amongst the authors and artists engaged in its production, of which sum more than three-fourths have been laboriously earned by the diligence of the writers.

There is a mode, however, of testing

whether cheap literature has destroyed the publication of *new books*, without including reprints and pamphlets. We take the four years from 1829 to 1832, as computed by ourselves, from the London Catalogues; and the four years from 1839 to 1842, as computed by Mr. McCulloch in the last edition of his 'Commercial Dictionary':—

## NEW WORKS, 1829 to 1832.

Years.	Vols.	Value of a single Copy at Publication price.	
1829	1413	£879	1s. 0d.
1830	1592	873	5 3
1831	1619	939	9 3
1832	1525	807	19 6

## NEW WORKS, 1839 to 1842.

1839	2302	£966	11s. 2d.
1840	2091	943	3 5
1841	2011	902	5 9
1842	2193	968	2 6

In the four years ending 1832 were published, of new books, 6149 volumes; in the four years ending 1842 were published 8597 volumes. The cost of a single copy of the 6149 volumes was 3499*l.*; of the 8597 volumes, 3780*l.* The average price per volume in the first period was 11*s.* 5*d.*; in the second period, 8*s.* 9½*d.*

Mr. McCulloch has also given the following table of reprints, from 1839 to 1842:—

## REPRINTS AND NEW EDITIONS.

No. of Vols.	Value at Publication price.
773 . . .	£296 7 <i>s.</i> 8 <i>d.</i>
821 . . .	327 16 10
741 . . .	314 12 7
684 . . .	295 9 6

Mr. McCulloch adds: "From inquiries we have made with much care and labour, we find that, at an average of the four years ending with 1842, 2149 volumes of new works, and 755 volumes of new editions and reprints (exclusive of pamphlets and periodical publications), were annually published in Great Britain; and we have further ascertained that the publication price of the former was 8*s.* 9½*d.*, and of the latter 8*s.* 2*d.* a volume. Hence, if we suppose the average impression of each work to have been 750 copies, it will be seen that the total value of the new works annually produced,

if they were sold at their publication price, would be 708,498*l.* 8*s.* 9*d.*, and that of the new editions and reprints, 231,218*l.* 15*s.* We believe, however, that if we estimate the price at which the entire impressions of both descriptions of works actually sells at 4*s.* a volume, we shall not be far from the mark; and if so, the real value of the books annually produced will be 435,600*l.* a year."

But the most remarkable characteristic of the press of this country is its *periodical* literature. It might be asserted, without exaggeration, that the periodical works issued in Great Britain during one year comprise more sheets than all the books printed in Europe from the period of Gutenberg to the year 1500.

The number of *weekly periodical works* (not newspapers) issued in London on Saturday, May 4, 1844, was about sixty. Of these the weekly sale of the more important amounts to little less than 300,000 copies, or about fifteen millions annually. The greater number of these are devoted to the supply of persons who have only a very small sum to expend weekly upon their home reading.

Of the weekly publications, independent of the sale of many of them in monthly parts, we may fairly estimate that the annual returns are little short of 100,000*l.*

The *monthly* issue of periodical literature from London is unequalled by any similar commercial operation in Europe. 227 monthly periodical works were sent out on the last day of May, 1844, to every corner of the United Kingdom, from Paternoster Row. There are also 38 periodical works published quarterly: making a total of 265.

A bookseller, who has been many years conversant with the industry of the great literary hive of London on Magazine-day, has favoured us with the following computations, which we have every reason to believe perfectly accurate:—

The periodical works sold on the last day of the month amount to 500,000 copies.

The amount of cash expended in the purchase of these 500,000 copies is 25,000*l.*

The parcels dispatched into the country, of which very few remain over the day, are 2000.

The annual returns of periodical works, according to our estimate, amount to 300,000*l.* Mr. McCulloch estimates them at 264,000*l.*

The number of newspapers published in the United Kingdom, in the year 1843, the returns of which can be obtained with the greatest accuracy through the Stamp Office, was 447. The stamps consumed by them in that year were 60,592,001. Their proportions are as follows:—

1843.

79 London newspapers .	31,692,092
212 English provincial .	17,058,056
8 Welsh . . . . .	339,500
69 Scotch . . . . .	5,027,589
79 Irish . . . . .	6,474,764

447	60,592,001
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The average price of these papers is, as near as may be, fivepence; so that the sum annually expended in newspapers is about 1,250,000*l.* The quantity of paper required for the annual supply of these newspapers is 121,184 reams, some of which paper is of an enormous size. In a petition to the pope in 1471, from Sweynheim and Pannartz, printers at Rome, they bitterly complain of the want of demand for their books, their stock amounting to 12,000 volumes; and they say, "You will admire how and where we could procure a sufficient quantity of paper, or even rags, for such a number of volumes." About 1200 reams of paper would have produced all the poor printers' stock. Such are the changes of four centuries.

We recapitulate these estimated annual returns of the commerce of the press:—

New books and reprints .	£435,600
Weekly publications, not newspapers . . . . .	100,000
Monthly publications . . . . .	300,000
Newspapers . . . . .	1,250,000
	£2,085,600

The literary returns of the United Kingdom, in 1743, were unquestionably little more than 100,000*l.* per annum.

What has multiplied them twenty-fold? Is it the contraction or the widening of the market—the exclusion or the diffusion of knowledge? The whole course of our literature has been that of a gradual and certain spread from the few to the many—from a luxury to a necessary—as much so as the spread of the cotton or the silk trade. Henry VIII. paid 12*s.* a yard for a silk gown for Anne Boleyn—a sum equal to five guineas a yard of our day. Upon whom do the silk-merciers now rely—upon the few Anne Boleyns, or the thousands who can buy a silk gown at half-a-crown a yard? The printing-machine has done for the commerce of literature what the mule and the Jacquard-loom have done for the commerce of silk. It has made literature accessible to all.

BOOTY. [ADMIRALTY COURTS, p. 29.]

BORDARII, one of the classes of agricultural occupiers of land mentioned in the Domesday Survey, and, with the exception of the villani, the largest. The origin of their name, and the exact nature of their tenure, are doubtful. Coke (*Inst. lib. i. § i. fol. 5 b*, edit. 1628) calls them "boors holding a little house with some land of husbandry, bigger than a cottage." Nichols, in his 'Introduction to the History of Leicestershire,' p. xlv., considers them as cottagers, and that they took their name from living on the borders of a village or manor; but this is sufficiently refuted by Domesday itself, where we find them not only mentioned generally among the agricultural occupiers of land, but in one instance as "circa aulam manentes," dwelling near the manor-house; and even residing in some of the larger towns. In two quarters of the town of Huntingdon, at the time of forming the Survey, as well as in King Edward the Confessor's time, there were 116 burgesses, and subordinate to them 100 bordarii, who aided them in the payment of the geld or tax. (*Domesd. Book. tom. i. fol. 203.*) In Norwich there were 420 bordarii: and 20 are mentioned as living in Thetford (*Ibid. tom. ii. fol. 116 b*, 173.)

Bishop Kennett states that, "The bordarii often mentioned in the Domesday Inquisition were distinct from the servi



and villani, and seem to be those of a less servile condition, who had a board or cottage with a small parcel of land allowed to them, on condition they should supply the lord with poultry and eggs and other small provisions for his board and entertainment." (*Gloss. Paroch. Antiq.*) Such also is the interpretation given by Bloomfield in his 'History of Norfolk.' Brady affirms "they were drudges, and performed vile services, which were reserved by the lord upon a poor little house and a small parcel of land, and might perhaps be domestic works, such as grinding, threshing, drawing water, cutting wood, &c." (*Pref. p. 56.*)

*Bord*, as Bishop Kennett has already noticed, was a cottage. *Bordarii*, it should seem, were cottagers merely. In one of the Ely Registers we find *Bordarii*, where the breviary of the same entry in Domesday itself reads *cotarii*. Their condition was probably different on different manors. In some entries in the Domesday Survey, the expression "*bordarii arantes*" occurs. At Evesham, on the abbey demesne, 27 *bordarii* are described as "*servientes-curia*." (*Domesd. tom. i. fol. 175 b.*)

On the demesne appertaining to the castle of Ewias there were 12 *bordarii*, who are described as performing personal labour on one day in every week. (*Ibid. fol. 186.*) At St. Edmondsbury in Suffolk, the abbot had 118 homagers, and under them 52 *bordarii*. The total number of *bordarii* noticed in the different counties of England in Domesday Book is 82,634. (*Ellis's General Introd. to Domesday Book*, edit. 1833, vol. i. p. 82 : ii. p. 511; Haywood's *Dissert. upon the Ranks of the People under the Anglo-Saxon Governments*, pp. 303, 305.)

BOROUGH-ENGLISH is a peculiar custom by which lands and tenements held in ancient burgage descend to the youngest son instead of to the eldest, wherever such custom obtains. It still exists in many cities and ancient boroughs, and in the adjoining districts. The land is held in socage, but descends to the youngest son in exclusion of all the other children. In some places this peculiar rule of descent is confined to the

case of children; in others the custom extends to brothers and other male collateral relations. The same custom also governs the descent of copyhold land in various manors.

The custom is alluded to by Glanville and by Littleton, of whom the latter thus explains it:—"Also for the greater part such boroughs have divers customes and usages, which be not had in other towns. For some boroughs have such a custome, that if a man have issue many sonnes and dyeth, the youngest son shall inherit all the tenements which were his father's within the same borough, as heire unto his father by force of the custome; the which is called Borough-English" (s. 165).

The origin of this custom is referred to the time of the Anglo-Saxons; and it does not appear to have been known by its present name until some time after the Conquest; for the Normans, having no experience of any such custom in their own country, distinguished it as "the custom of the Saxon towns." In the reign of Edward III. the term borough-English was used in contrast with the Norman law: thus it was said that in Nottingham there were two tenures—"burgh-Engloyes" and "burgh-Fraungoyes," the usages of which tenures are such that all the tenements whereof the ancestor dies seised in "burgh-Engloyes" ought to descend to the youngest son, and all the tenements in "burgh-Fraungoyes" to the eldest son, as at common law. (1 Edward III. 12 a.)

Primogeniture was the rule of descent in England at common law; but in the case of socage lands all the sons inherited equally until long after the Conquest, wherever it appeared that such lands had, by custom, been anciently divisible. But this general rule of descent was often governed by peculiar customs, and in some places the eldest son succeeded his father by special custom, while in others (viz. those subject to borough-English) the youngest son alone inherited. (Glanville, lib. vii. c. 3, and notes by Beames.)

"This custome" (of borough-English), says Littleton, "also stands with some certaine reason, because that the younger son (if he lacke father and mother), be-

cause of his younger age, may least of all his brethren helpe himself" (§ 211). When the state of society in the ancient English boroughs is considered, the reason assigned by Littleton will appear sufficient. The inhabitants supported themselves by trade; their property consisted chiefly of moveables; and their real estate was ordinarily confined to the houses in which they carried on their business, with, perhaps, a little land attached. Such persons were rarely able to offer an independence to their children, but were satisfied to leave each son, as he grew up, to provide for himself by his own industry. To endow a son with a portion of his goods, and send him forth to seek his own fortunes, was all that a burgess thought necessary; and so constant was this practice, that the law considered the son of a burgess to be of age "so soon as he knew how to count money truly, to measure cloths, and to carry on other business of his father's of the like nature" (*Glanv.* lib. 7, s. 9; *Bracton*, lib. 2, s. 37). In this condition of life, the youngest son would have the least chance of being provided for at his father's death, and it was, therefore, a rational custom to make provision for him out of the real estate. But as it might happen that the youngest son had been provided for, like his brothers, before the father's death, by the custom of most boroughs the father had a power of devising his tenements by will. Such a power was unknown to the common law; for without the consent of his heir no man could leave any portion of his inheritance to a younger son, "because," says *Glanville*, "if this were permitted, it would frequently happen that the elder son would be disinherited, owing to the greater affection which parents often feel towards their younger children." And the freedom of testamentary devise, enjoyed under the custom of borough-English, to the prejudice of heirs, was not fully conceded by the laws of England until the latter part of the seventeenth century. (12 *Car. II. c. 24.*)

The origin of the custom of borough-English has, in later times (3 *Modern Reports*, Preface) been referred to another cause, instead of that assigned by

Littleton. It has been said that by the custom of certain manors the lord had a right to lie with the bride of his tenant holding in villenage, on the first night of her marriage; and that, for this reason, the youngest son was preferred to the eldest, as being more certainly the true son of the tenant. But this supposition is, on many grounds, less satisfactory than the other. Admitting the alleged right of the lord, it would have been a reason, perhaps, for passing over the eldest son, but why should the second and other sons have been also superseded in favour of their youngest brother? The legitimacy of the eldest son alone could have been doubted, and upon this hypothesis, either the second son would have been his father's heir, or all the sons except the eldest would have shared the inheritance. But the existence of this barbarous usage in England is altogether denied by many (1 *Stephen, Comm.* 199; 3 *Rep. Real Prop. Commrs.* p. 8); and even if the customary fine payable to the lord in certain manors (especially in the north of England) on the marriage of the son or daughter of his villein, be admitted to have been a composition of the lord's right of concubinage (see *Du Cange*, tit. "*Marcheta*," *Co. Lit.* 117 b, 140 a; *Bract.* lib. 2, § 26), it does not appear that such fines are more prevalent in those places where the custom of borough-English obtains, than in other parts of the country where there are different rules of descent. (*Robinson On Gavelkind*, p. 387.)

But whatever may have been the origin of the custom, it is no longer to be supported by any arguments in its favour. If land is to be inherited by one son alone, the eldest is undoubtedly the fittest heir: he grows up the first, and in case of his father's death succeeds at once to his estate, fulfils the duties of a landowner, and stands in *loco parentis* to his father's younger children, while the succession of the youngest son would always be liable to a long minority, during which the rest of the family would derive little benefit from the estate. It is also an unquestionable objection to the custom that each son in succession may conceive himself to be the heir, until he is deprived

of his inheritance by the birth of another brother.

In addition to these general objections to the custom, there are legal difficulties connected with its peculiarity of descent. In making out titles, for instance, it is much more difficult to prove that there was no younger son than that there was no elder son; and obscure questions must arise concerning the boundaries of the land subject to the custom, and respecting the limits of the custom itself in each particular place where it prevails. For these reasons the Commissioners of Real Property, in 1832, recommended the universal abolition of the custom (3rd *Rep.* p. 8), which, however, is still recognised by the law as an ancient rule of descent wherever it can be shown to prevail. (Glanville, lib. 7, c. 3; *Co. Litt.* § 165; 1st *Inst.* 110 b; Robinson *On Gavelkind*, Appendix; 7 Bacon's *Abridgment*, 560, tit. "Descent;," Cowell's *Law Dict.* tit. "Borrow-English;," Du Cange, *Glossarium*, tit. "Marcheta;," *Regiam Magistatem*, lib. 4, cap. 31; 2 Black. *Comm.* 83; 1 Stephen, *Comm.* 198; 3 Cruise, *Digest*, 388; 3 & 4 Will. IV. c. 106; 3rd *Report of Real Property Commissioners.*)

BOROUGH, MUNICIPAL. [MUNICIPAL CORPORATIONS.]

BOROUGH, PARLIAMENTARY. [PARLIAMENT.]

BOTTOMRY, BOTTOMREE, or BUMMAREE, is a term derived into the English maritime law from the Dutch or Low German. In Dutch the term is Bomerie or Bodemery, and in German Bodmerei. It is said to be originally derived from Boden or Bodem, which in Low German and Dutch formerly signified the bottom or keel of a ship; and according to a common process in language, the part being applied to the whole, also denoted the ship itself. The same word, differently written, has been used in a similar manner in the English language; the expression *bottom* having been commonly used to signify a ship, previously to the seventeenth century, and being at the present day well known in that sense as a mercantile phrase. Thus it is a familiar mode of expression among merchants to speak of "shipping goods in foreign bottoms."

The contract of bottomry in maritime law is a pledge of the ship as a security for the repayment of money advanced to an owner for the purpose of enabling him to carry on the voyage. It is understood in this contract, which is usually expressed in the form of a bond, called a Bottomry Bond, that if the ship be lost on the voyage, the lender loses the whole of his money; but if the ship and tackle reach the destined port, they become immediately liable, as well as the person of the borrower, for the money lent, and also the premium or interest stipulated to be paid upon the loan. No objection can be made on the ground of usury, though the stipulated premium exceeds the legal rate of interest, because the lender is liable to the casualties of the voyage, and is not to receive his money again at all events. In France the contract of bottomry is called *Contrat à la grosse*, and in Italy *Cambio marittimo*, and is subject to different regulations by the respective maritime laws of those countries. But money is generally raised in this way by the master of the ship when he is abroad and requires money to repair the vessel or to procure other things that are necessary to enable him to complete his voyage. If several bottomry bonds are given by the master for the same ship at different times, that which is later in point of time must be satisfied first, according to a rule derived from the Roman law (*Dig.* 20, tit. 4, s. 5, 6): the reason of this rule is, that a subsequent lender by his loan preserves the security of a prior lender. It is a rule of English law that there must be a real necessity to justify the master in borrowing on the security of his ship.

In taking up money upon Bottomry, the loan is made upon the security of the ship alone; but when the advance is made upon the lading, then the borrower is said to take up money at *respondentia*. In this distinction as to the subject matter of the security consists the only difference between Bottomry and Respondentia; the rules of English maritime law being equally applicable to both.

The practice of lending money on ships or their cargo, and sometimes on the freight was common in Athens, and in

other Greek commercial towns. Money thus lent was sometimes called (*ναυτικά χρήματα*) ship-money. Demosthenes (I. *Against Aphobus*), in making a statement of the property left him by his father, enumerates seventy minæ lent on bottomry. If the ship and cargo were lost, the lender could not recover his principal or interest; which stipulation was often expressly made in the (*συγγραφή*) bond. (Demosthenes *against Phormion*, and *against Dionysodorus*, c. 6, 10.) The nature of the bottomry contract is shown in the Oration of Demosthenes against Dionysodorus:—3000 drachmæ were lent on a ship, on condition of her sailing to Egypt and returning to Athens; the money was lent on the double voyage, and the borrower contracted in writing to return direct to Athens, and not dispose of his cargo of Egyptian grain at any other place. He violated his contract by selling his cargo at Rhodes, having been advised by his partner at Athens that the price of grain had fallen in that city since the departure of the vessel. The plaintiff sought to recover principal and interest, of which the borrower attempted to defraud him: damages also were claimed, conformably to the terms of the bond. As neither principal nor interest could be demanded if the vessel were lost, it was a common plea on the part of the borrower that the ship was wrecked. The rate of interest for money thus lent was of course higher than the usual rate. The speech of Demosthenes *Against Lacritus* contains a complete Bottomry contract, which clearly shows the nature of these loans at Athens.

Money was also lent, under the name of *pecunia trajectitia*, on ships and their cargo among the Romans, and regulated by various legal provisions. But it appears that the money was merely lent on condition of being repaid if the ship made her voyage safe within a certain time, and that the creditor had no claim on the ship unless it was specifically pledged. The rate of interest was not limited by law, as in the case of other loans, for the lender ran the risk of losing all if the ship was wrecked; but this extraordinary rate of interest was only due while the vessel was actually at

sea. The interest of money lent on sea-adventures was called *Usuræ Maritimæ*. (*Dig.* 22, tit. 2, “*De Nautico Fœnere*,” Molloy, *De Jure Maritimo*, lib. ii. c. 11; Parke *On Insurance*, chap. xxi.; Benecke’s *System des Assecuranz und Bodmerei-wesens*, bd. 4.)

It has been already stated that Bottomry, in its general sense, is the pledge of a ship as a security for money borrowed for the purpose of a voyage. It has been conjectured that the power of a master to pledge a ship in a foreign country led to the practice of an owner borrowing money at home upon the like security. But Abbott, in his treatise on Shipping, expresses a doubt on this matter, and adds that the Roman law says nothing of contracts of bottomry made by the master of a ship in that character, according to the practice which has since universally prevailed. Yet there are passages in the ‘*Digest*’ (20, tit. 4, s. 5, 6) which seem to imply that a master might make such a contract, for, as already observed, the ground for giving the preference to a subsequent over a prior lender is stated to be that the subsequent loan saves the prior lender’s security; and we must accordingly suppose that money could be borrowed by the master when he found it necessary for the preservation of the ship or cargo.

The terms bottomry and respondentia are also applied to contracts for the repayment of money lent merely on the hazard of a voyage—for instance, a sum of money lent to a merchant to be employed in trade, and to be repaid with extraordinary interest if the voyage is safely performed. This is in fact the *Usuræ Maritimæ* of the Romans. But the stat. 7 Geo. I. c. 21, § 2, made null and void all contracts by any of his Majesty’s subjects, or any person in trust for them, for or upon the loan of money by way of bottomry on any ships in the service of foreigners, and bound or designed to trade in the East Indies or places beyond the Cape of Good Hope. Another statute, 19 Geo. II. c. 37, enacted that all moneys lent on bottomry or respondentia on vessels bound to or from the East Indies shall be expressly lent only on the ship or on the merchandise; that the lender shall have

the benefit of salvage; and that if the borrower has not an interest in the ship, or in the effects on board, to the value of the sum borrowed, he shall be responsible to the lender for so much of the principal as has not been laid out, with legal interest and all other charges, though the ship and merchandise be totally lost. With the exception of the cases provided for by these two statutes, money may still be lent on the hazard of a voyage. Bottomry is sometimes treated as a part of the law of insurance, whereas it is quite a different thing. For further information, see Abbott, *On Shipping*; Parke, *System of the Law of Marine Insurance*.

It is observed in the 'Staats-Lexicon' of Rotteck and Welcker, art. "Bodmerei," that Bodmerei "is a loan for a sea-voyage, in which the ship becomes pledged. In this simplest form, at least, it is possible that this kind of transaction may have originated among the German nations. And so it is still viewed in the English law, even where the ship is not expressly pledged." This, however, is a misstatement of the English law. The same article, after some general remarks on Bottomry, which it is to be presumed apply to the German states, adds—"that, in fact, Bottomry now generally occurs only in cases when the master of a ship, during the voyage, requires money, and obtains a loan for the purpose of prosecuting it, for which he has no better security to offer than the ship itself. This transaction also differs from the usual contract of pledge in this: that the owner himself does not pledge the ship; but the captain is considered as the agent of the owner, and as doing what is necessary for his interest under the circumstances."

**BOUNTY**, a sum of money paid by government to the persons engaged in certain branches of commerce, manufactures, or other branch of industry.

The question of bounties and their impolicy is discussed by Adam Smith in his 'Wealth of Nations,' book iv. chap. 5; and the subject has also been treated in a very complete manner by the late Mr. Ricardo in his 'Principles of Political Economy and Taxation.' When Postlethwaite published his 'Dictionary of Commerce,' in 1774, bounties were "very nu-

merous." After the publication of Adam Smith's work bounties began to be regarded with less favour, and have at length sunk into complete discredit. They are now no longer relied upon as a means of furthering the true interests of commerce. The policy of bounties was very materially connected with the opinions of a former day respecting the balance of trade. [BALANCE OF TRADE.] It was thought that they operated in turning the balance in our favour. Adam Smith remarks:—"By means of bounties our merchants and manufacturers, it is pretended, will be enabled to sell their goods as cheap or cheaper than their rivals in the foreign markets. . . . We cannot (he adds) force foreigners to buy their goods, as we have done our own countrymen. The next best expedient, it has been thought, therefore, is to *pay* them for *buying*." Bounties in truth effect nothing more than this. The propositions maintained by Adam Smith are, that every trade is in a natural state when goods are sold for a price which replaces the whole capital employed in preparing and sending them to the market with something in addition in the shape of profit. Such a trade needs no bounties. Individual interest is sufficient to prompt men to engage in carrying it on. On the other hand, when goods are sold at a price which does not replace the cost of the raw material, the wages of labour and all the incidental expenses which have been incurred in bringing them into a state fit for the market, together with the manufacturer's profits; that is, when they are sold at a loss, the manufacturer will cease to produce an unprofitable article, and this particular branch of industry will soon become extinct. It perhaps happens that the general interests of the country are thought to be peculiarly connected with the species of industry in question, and that it therefore behoves government to take means for preventing its falling into decay. At this point commences the operation of bounties, which are devised for the purpose of producing an equilibrium between the cost of production, the market-price, and a remunerating price, the last of which alone promotes the con-

stant activity of every species of industry. Smith observes, "The bounty is given in order to make up this loss, and to encourage a man to continue or perhaps to begin a trade of which the expense is supposed to be greater than the returns; of which every operation eats up a part of the capital employed in it, and which is of such a nature, that if all other trades resembled it, there would soon be no capital left in the country." And he adds:—"The trades, it is to be observed, which are carried on by means of bounties are the only ones which can be carried on between two nations for any considerable time together, in such a manner as that one of them shall always and regularly lose, or sell its goods for less than they really cost. . . . The effect of bounties, therefore, can only be to force the trade of a country into a channel much less advantageous than that in which it would naturally run of its own accord."

One of the most striking instances of the failure of the bounty system occurred about the middle of the last century in connexion with the white herring fishery. Tempted by liberal bounties persons rashly ventured into the business without a knowledge of the mode of carrying it on in the most economical and judicious manner, and in no very long space of time a joint-stock of 500,000*l.* was nearly all lost.

The bounty on the exportation of corn was given up in 1815 [*CORN TRADE*], and that on the exportation of herrings, linen, and several other articles ceased in 1830. In 1824 the sums paid as bounties for promoting fisheries, linen manufactures, &c. in the United Kingdom was 536,228*l.*; 273,269*l.* in 1828; 170,999*l.* in 1831; and in 1832 and 1833 the sums of 76,572*l.* and 14,713*l.* respectively.

Bounties are not now allowed on any article of export; but in some cases it is believed that *DRAWBACKS* constitute in reality a bounty, being greater than the duty which has been paid on the article. The drawback on refined sugar, for instance, has been fixed at a certain amount proportioned to the quantity of raw sugar supposed to have been used, which is calculated at 34 cwts. of raw to 20 cwts. of

refined; but by improvements in the mode of refining, a less quantity of raw sugar may be required in manufacturing 20 cwts. of refined sugar; and the drawback on the difference is in reality a bounty.

BOUNTY, QUEEN ANNE'S. [*BENEFICE*, pp. 343, 345.]

BREAD. [*ADULTERATION*; *ASSIZE*.]

BREVET, in France, denotes any warrant granted by the sovereign to an individual in order to entitle him to perform the duty to which it refers. In the British service, the term is applied to a commission conferring on an officer a degree of rank immediately above that which he holds in his particular regiment; without, however, conveying a power to receive the corresponding pay. Brevet rank does not exist in the royal navy, and in the army it neither descends lower than that of captain, nor ascends above that of lieutenant-colonel. It is given as the reward of some particular service which may not be of so important a nature as to deserve an immediate appointment to the full rank: it however qualifies the officer to succeed to that rank on a vacancy occurring, in preference to one not holding such brevet, and whose regimental rank is the same as his own.

In the fifteenth section of the Articles of War it is stated that an officer having a brevet commission, while serving on courts-martial formed of officers drawn from different regiments, or when in garrison, or when joined to a detachment composed of different corps, takes precedence according to the rank given him in his brevet, or according to the date of any former commission; but while serving on courts-martial or with a detachment composed only of his own regiment, he does duty and takes rank according to the date of his commission in that regiment. Brevet rank, therefore, is to be considered effectual for every military purpose in the army generally, but of no avail in the regiment to which the officer holding it belongs, unless it be wholly or in part united for a temporary purpose with some other corps. (*Samuel's Hist. Account of the British Army*, p. 615.)

Something similar to the brevet rank above described must have existed in the French service under the old monarchy,

for, according to Père Daniel (tom. ii. p. 217, 227), the colonel-general of the Swiss troops had the power of nominating subaltern officers to the rank of captains by a certificate, which enabled them to hold that rank without the regular commission. The same author states also that if any captain transferred himself from one regiment to another, whatever might be the date of his commission, he was placed at the bottom of the list in the regiment which he entered, without, however, losing his right of seniority when employed in a detachment composed of troops drawn from several different regiments.

The introduction of brevet rank into the British army, as well as that of the half-pay allowance to officers on retiring from regimental duty, probably took place soon after the Revolution in 1688. But the practice of granting, when officers from different regiments are united for particular purposes, a nominal rank higher than that which is actually held, appears to have been of older date; for in the *Soldier's Grammar*, which was written in the time of James I., it is stated that the lieutenants of colonels are captains by courtesy, and may sit in a court of war (court-martial) as junior captains of the regiments in which they command. (Grose, *Military Antiquities*, vol. ii.) It was originally supposed that both officers holding commissions by brevet and those on half-pay were subject to military law; but, in 1748, when the inclusion of half-pay officers within the sphere of its control was objected to as an unnecessary extension of that law, the clause referring to them in the Mutiny Act was omitted, and it has never since been inserted. In 1786 it was decided in parliament that brevet officers were subject to the Mutiny Act or Articles of War, but that half-pay officers were not. (Lord Woodhouselee, *Essay on Military Law*, p. 112.) Brevet command was frequently conferred on officers during the late war; but the cause no longer existing, the practice has declined, and at present there are very few officers in the service who hold that species of rank.

BREWER. [ALEHOUSES, p. 99; ADULTERATION, p. 36.]

BRIBERY, in English law, has a threefold signification: denoting, first, the offence of a judge, magistrate, or any person concerned judicially in the administration of justice, receiving a reward or consideration from parties interested, for the purpose of procuring a partial and favourable decision; secondly, the receipt or payment of money to a public ministerial officer as an inducement to him to act contrary to his duty; and thirdly, the giving or receiving of money to procure votes at parliamentary elections, or elections to public offices of trust.

I. In England judicial bribery has from early times been considered a very heinous offence. By an ancient statute, 2 Hen. IV. "All judges, officers, and ministers of the king convicted of bribery shall forfeit treble the bribe, be punished at the king's will, and be discharged from the king's service for ever." The person offering the bribe is guilty of a misdemeanour. Sir Edward Coke says that "if the party offereth a bribe to the judge, meaning to corrupt him in the cause depending before him, and the judge taketh it not, yet this is an offence punishable by law in the party that doth offer it." (3 *Inst.* 147.) In the 24 Edw. III. (1351) Sir William Thorpe, then chief justice of England, was found guilty, upon his own confession, of having received bribes from several great men to stay a writ which ought in due course of law to have issued against them. For this offence he was condemned to be hanged, and all his lands and goods forfeited to the crown. Blackstone says (*Comment.* vol. iv. p. 140) that he was actually executed; but this is a mistake, as the record of the proceeding shows that he was almost immediately pardoned and restored to all his lands (3 *Inst.* 146). It appears also from the Year Book (28 Ass. pl. 2) that he was a few years afterwards reinstated in his office of chief justice. The case, therefore, does not speak so strongly in favour of the purity of the administration of justice in early times as many writers, following Blackstone, have supposed. In truth, the corruption of the judges for centuries after Sir Wm. Thorpe's case occurred was notorious and unquestionable. It is noticed by Edward

VI. in a discourse of his published by Burnet, as a complaint then commonly made against the lawyers of his time. (Burnet's *Hist. of the Reformation*, vol. ii. App. p. 72.) Its prevalence at a still later period, in the reign of James I., may be inferred from the caution contained in Lord Chancellor Bacon's address to Sergeant Hutton upon his becoming a judge, "that his hands and the hands of those about him should be clean and uncorrupt from gifts and from serving of turns, be they great or small ones." (Bacon's *Works*, vol. ii. p. 632, edit. 1765.) In Lord Bacon's own confession of the charges of bribery made against him in the House of Lords, he alludes, by way of palliation, to the offence of judicial corruption as being *vitium temporis*. (Howell's *State Trials*, vol. ii. p. 1104.) Since the Revolution, in 1688, judicial bribery has been altogether unknown in England, and no case is reported in any law-book since that date in which this offence has been imputed to a judge in courts of superior or inferior jurisdiction.

II. Bribery in a public ministerial officer is a misdemeanour at common law in the person who takes and also in him who offers the bribe. A clerk to the agent for French prisoners of war at Porchester Castle, who had taken money for procuring the exchange of certain prisoners out of their turn, was indicted for bribery and severely punished by the Court of King's Bench. (1 East's *Reports*, 183.) A person offered the first lord of the treasury a sum of money for a public appointment in the colonies, and the Court of King's Bench, in Lord Mansfield's time, granted a criminal information against him. (4 Burrows's *Rep.* 2500.)

Bribery with reference to particular classes of public officers has become punishable by several acts of parliament. Thus by the stat. 6 Geo. IV. c. 106, § 29, if any person shall give, or offer, or promise any bribe to any officer or other person employed in the customs, to induce him in any way to neglect his duty (whether the offer be accepted or not), he incurs a penalty of 500*l.* So also by 6 Geo. IV. c. 108, § 35, if any officer of the *customs*, or any officer of the army,

navy, marines, or other person employed by or under the direction of the commissioners of the customs, shall make any collusive seizure, or deliver up, or agree to deliver up, or not to seize any vessel, or goods liable to forfeiture, or shall take any bribe for the neglect or non-performance of his duty, every such offender incurs a penalty of 500*l.*, and is rendered incapable of serving his Majesty in any office whatever, either civil or military; and the person also giving or offering the bribe, or making such collusive agreement with the officer, incurs the like penalty. By the 6 Geo. IV. c. 80, § 145, similar penalties are inflicted upon officers of the *excise* who take bribes, as well as upon those who give or offer the bribe.

III. As to bribery for votes at elections to public offices.

1. Bribery at parliamentary elections is said to have been always an offence at common law, and it is punishable by indictment or information. There are however no traces of any prosecutions for bribery of this kind, until particular penalties were imposed upon the offence by acts of parliament. The act 7 & 8 Will. III. c. 4, called the Treating Act, declares that no candidate shall, after the teste (date) of the writs, or after the ordering of the writs, or after any vacancy, give any money or entertainment to his electors, or promise to give any in order to his being elected, under pain of being incapable to serve for that place in parliament. The 2 Geo. II. c. 24, which is explained and enlarged by 9 Geo. II. c. 28, and 16 Geo. III. c. 11, imposed penalties both on the giver and receiver of a bribe. But the operative statute upon this subject at the present time is 49 Geo. III. c. 118, which provides that if any person shall give or cause to be given, directly or indirectly, or shall promise or agree to give any sum of money, gift, or reward, to any person upon any engagement that such person to whom such gift or promise shall be made, shall by himself, or by any other person at his solicitation, procure or endeavour to procure the return of any person to serve in parliament for any place, every such person so giving or promising (if not returned) shall for every such gift or pro-



mise forfeit the sum of 1000*l.*; and every such person returned, and so having given or promised to give, and knowing of and consenting to such gifts or promises upon any such engagement, shall be disabled and incapacitated to serve in that parliament for such place; and any person or persons who shall receive or accept of any such sum of money, gift, or reward, or any such promise upon any such engagement, shall forfeit the amount of such sum of money, gift, or reward, over and above the sum of 500*l.*; which sum of 500*l.* may be recovered by any party suing for the same in the inferior Courts of Record in Great Britain or Ireland. This act provides for every legal expense *bonâ fide* incurred at or concerning an election. It also imposes penalties on persons giving, procuring, or promising to give or procure any office, place, or employment, to any person upon an express contract to procure a seat in the House of Commons; the penalty on the person returned is loss of his seat, and on the receiver of the office forfeiture of it, incapacity, and the payment of 500*l.*; but if the person who so gives, procures, or promises any place is an officer of the crown, a penalty of 1000*l.* is imposed on him. Actions on the case under this statute must be brought in two years.

The act of 5 & 6 Vict. c. 102, is an act for the better discovery of bribery and treating at the elections of members of parliament, and is commonly known as Lord John Russell's Act. The 20th and 22nd sections of this act are as follow:—

§ 20. And whereas a practice has prevailed in certain boroughs and places, of making payments to or “on behalf of candidates to the voters in such manner that doubts have been entertained whether such payments are to be deemed bribery,” be it declared, that the payment or gift of any sum of money, or other valuable consideration whatsoever, to any voter before, during, or after any election, or to any person on his behalf, or to any person related to him by kindred or affinity, and which shall be so paid or given on account of such voter having voted or refrained from voting, or being about to vote or refrain from voting, at the said election, whether the same shall

have been paid or given under the name of *head money* or any other name whatsoever, and whether such payment shall have been in compliance with any usage or not, shall be deemed bribery. § 22. The act 7 & 8 Will. III. c. 4, having been found insufficient to prevent treating: be it enacted &c. that any candidate or person elected, who shall by himself, or by or with any person, or in any manner, directly or indirectly, give or provide, or cause or knowingly allow to be given or provided, wholly or partly at his expense, or pay wholly or in part any expenses incurred for any meat, drink, entertainment, or provision to or for any person at any time, either before, during, or after such election, for the purpose of corruptly influencing such person, or any other person, to give or to refrain from giving his vote in any such election, or for the purpose of corruptly rewarding such person, or any other person, for having given or refrained from giving his vote at any such election, shall be incapable of being elected or sitting for the particular county, &c. during the Parliament for which such election shall be holden.

Cases of bribery in the election of members of Parliament are most commonly brought to notice by the special reports made by Election Committees. [ELECTIONS.]

2. Bribery at municipal elections was also an offence at common law, and a criminal information was granted by the Court of King's Bench against a man for promising money to a member of the corporation of Tiverton to induce him to vote for a particular person at the election of a mayor. (*Plympton's Case*, 2 Lord Raymond's Reports, 1367.)

The 54th clause of the act for the regulation of Municipal Corporations in England and Wales (5 & 6 Will. IV. c. 76) provides “that if any person who shall have, or claim to have, any right to vote in any election of mayor, or of a councilor, auditor, or assessor of any borough, shall ask or take any money or other reward, or agree or contract for any money or other reward whatsoever, to give or forbear to give his vote in any such election, or if any person shall by any gift or reward, or by any promise,

agreement, or security for any gift or reward, corrupt or procure, or offer to corrupt or procure any person to give or forbear to give his vote in any such election, such person so offending in any of the cases aforesaid, shall for every such offence forfeit the sum of 50*l.*, and for ever be disabled to vote in any municipal or parliamentary election whatever in any part of the United Kingdom, and also shall for ever be disabled to hold any office or franchise to which he then shall or at any time afterwards may be entitled as a burgess of such borough, as if such person was naturally dead."

The Elections of Roman magistrates occurred annually, and this circumstance gave the Romans great opportunity of becoming expert in all the means of securing votes. The word *Ambitio* (from which our word *Ambition* comes) signified literally a going about. As applied to elections, it signified any improper mode of trying to gain votes. The Tribunes of the Plebs at an early period attempted to check the solicitation of votes, by proposing and carrying a law which forbade a man to add any white to his dress with a view to an election. (Livy, iv. 25.) This, observes Livy, which would now be viewed as a small matter, raised at that time a great contest between the *Patres* and the *Plebs* (the *Patricians* and *Plebeians*). "To add white to the dress" signified to whiten the dress by artificial means as it is said, or perhaps to put on a white dress. From this circumstance, persons who were seeking the magistracy were called *Candidati*, that is, persons dressed in a white (*candida*) dress; and this is the remote origin of our word *Candidate*. Another law (*Lex Paetelia*) against canvassing on the market-days, and going round to the country places where numbers of people were collected, was passed B.C. 359, which Livy (vii. 15) calls a law about *Ambitus*, the name by which canvassing and solicitation of votes was designated. The object of this law was to check the canvassing of *Novi homines*, men not of the class of nobles, who were aspiring to the honours of the State. After a long interval (B.C. 181) the *Lex Cornelia Baebia* enacted that those who were convicted of the offence called *Am-*

*bitus* should be incapable of being candidates for a magistracy for ten years. (Liv. xl. 19.) The *Lex Acilia Calpurnia* (B.C. 67) contained enactments against hiring people to attend the candidates, feasting the people, and giving them places according to their tribes at the shows of gladiators. The penalties were fines and exclusion from the Senate, and disability to be elected to magistracies. In the consulship of Cicero, B.C. 63, a *Lex Tullia* added to the former penalties for the offence of *Ambitus*, ten years' exile. This law also forbade a man to exhibit shows of gladiators within two years before he was a candidate for a magistracy. In B.C. 61, a *Lex* which was proposed by the tribune M. Aufidius Lurco enacted that if a man promised money to a tribe with a view to his election, he should be liable to no penalty, if he did not pay it; if he did pay it, he was liable to pay the tribe a certain sum (annually?) as long as he lived. (Cicero, *Ad Attic.* i. 16.)

The usual mode of trying to gain votes, to which the word *ambitus* applied, was by gifts of money. The candidate used to go round and call on the voters, shake them by the hand, and make them civil speeches. The voting by ballot in the *Comitia* was established B.C. 139, and, according to the Roman system, the vote of each of the centuries and of each of the thirty-four tribes was counted as one vote. Whether then the election was at the *Comitia Centuriata* or the *Comitia Tributa*, the object was to secure the votes of the centuries and of the tribes. Agents were employed to manage all this: *interpretes*, to make the bargain; *sequestres*, to hold the money till the election was over; and *divisores*, to pay it out. The *Lex Licinia* (B.C. 55) was entitled a law against *Sodalitia*; but critics have not been agreed as to what the term properly means. Wunder (*Prolegomena* to his edition of Cicero's oration for Cn. Plancius) says that the offence against which this Licinian law was directed, differed from *Ambitus*, which consisted in giving money or treating the people, or in any way buying their votes. The offence of *Sodalitia* consisted, as he says, in using force; certain persons, called *sodales* (associates, agents), were

bribed by the candidates to compel the rest to give their votes to the briber; and that this might be the more easily managed, the members of each tribe were marked out into divisions, and the whole body of voters was divided into parcels, so that each sodalis or agent had a certain portion of a tribe or of the whole body of voters assigned to him, and it was his business to get the votes of his portion of the voters in any way that he could for the candidate who hired him. "Accordingly," Wunder concludes, "in those elections (comitia) in which candidates employed sodales (agents), the multitude were not so much induced to give their votes by money as by force." This is a strange way of explaining an election: the agents were paid, and the voters got nothing. If the learned German had read the late Report on the Sudbury election, he would find it was just the other way there. The absurdity of supposing that the voters were compelled to vote, and that by one man in his particular division, is sufficiently striking. The learned commentator then proceeds to quote passages from Cicero's oration for his friend Cn. Plancius, who was tried under the Licinian law, to prove his point; but his quotations prove just as much as his assertions. It is evident that the law was directed against one of those arrangements which had been invented to facilitate bribery. Agents were appointed to look after particular sets of voters: the value of the division of labour was recognised in this method of securing votes. It is evident from an expression in Cicero's oration (c. 18), that the marking out of the voters into classes or bodies, the putting money in the hands of a person who had to pay it if the candidate was returned, the promising of the money, and the final payment, were all parts of one well-organised system of bribery. One may conclude that the voters in a tribe got nothing unless their briber was returned. They now voted by ballot, but this did not prevent bribery: it only rendered the payment contingent. The means of knowing who had voted right and who had not, we can only conjecture; but if the agents kept a good account of all the proceedings, they might not have

much difficulty in ascertaining if their several squads had done their duty and kept their promise. It is quite consistent with all this that a man might be tried for the offence of bribery under the Licinian law only. There were, as it has been shown, various laws against bribery; and this was directed against that particular part of the system which was the most efficacious in corrupting the voters. It is stated that the penalties of the Licinian law were ten years' exile, the same as under the Lex Tullia. Pompeius Magnus, when he was sole consul, B.C. 52, proposed and carried a law for shortening proceedings in trials for Ambitus. When C. Julius Caesar was Dictator, he nominated one-half of the candidates for magistracies, except for the consulship, and signified his pleasure to the tribes by a circular. (Suetonius, *Caesar*, c. 41.) Under Augustus the forms of elections were still maintained: under his successor Tiberius the elections were transferred from the Popular assembly to the Senate. Finally, the Emperors nominated to all public offices, many of which, such as the consulship, were now merely honorary.

Besides the speech of Cicero for Cn. Plancius, there is another for L. Murena, who was tried under the laws against Ambitus. The Romans could never stop bribery by legislation. The penalties, so far as we know, were only directed against those who gave a bribe, unless the Licinian law, the provisions of which are imperfectly known, may have gone further, and included Sodales (agents). But we are not aware that there is any proof of this.

Bribery at elections for members of a legislative body, and of one invested with such power as the English House of Commons, is universally considered to be a political evil. It is considered a demoralizing practice with respect to those who sell their votes; and, if that be so, there seems no reason why it should not be demoralizing to those who buy them, though it is not always true that he who hires and he who is hired are equally demoralized by the baseness of the deed for which money is paid. The practice is also injurious to the constitution of the

House of Commons, if men are returned by the force of bribery, who would be replaced by better men if there was no bribery. In a rich country, where men are ambitious of political distinction, and the system of representation exists, bribery also will probably always exist. Public opinion, or positive morality, will perhaps never be strong enough to stop the practice entirely. If it cannot be entirely stopped, the question is how it can be reduced to the least possible amount. It is generally assumed that the State should in some way attempt to suppress bribery at elections; but it might be worth consideration whether the State should make any attempt to prevent it by penal measures. It is not certain that, where there are large constituencies, there would be more bribery at elections if there were no laws against it; nor is it certain that worse members would be returned by such constituencies than at present. One objection to bribery being permitted, or not declared to be a legal offence, might be that the State would, by such permission, allow the purchase of votes as a thing indifferent, instead of declaring it to be a thing that ought to be punished. And it may be urged that the electors, instead of looking to due qualifications in their representative, would only look to his ability to pay, and would give their vote solely to him who paid most for it; which is the case even now in some constituencies, as experience has proved. But if this is not the case at present to any great extent in the largest constituencies; if in such bodies there are many to whom a bribe is not offered, and many who from various reasons would not accept it, what reason is there for supposing that there would be more bribery in such constituencies if there were no laws against it? When the constituencies are large and collected on a comparatively small surface, and when the time of the election is limited to a few days, bribery cannot be very effectually carried on, though it is true that there is time enough before the election for the opposite parties to canvass actively, and to divide a large constituency into districts for the purpose of better securing the votes. Still the numbers of the electors, their proximity, and the

shortness of the time, are obstacles to bribery. The proximity of the electors to one another might be supposed to favour bribery, because the trouble of dealing with a large number on a limited surface is less than the trouble of dealing with an equal number who are dispersed over a larger surface. This argument must be allowed to have its weight; but it is outweighed by another. In political discussions we must assume some principles as true. If the assumptions are not generally admitted, the conclusion will not convince those who deny the assumptions. If the assumptions are admitted to be true, it only concerns all parties to see that the conclusion is fairly drawn. It is here assumed that a majority of the electors in the largest constituencies, and a great majority of the educated class, admit that it is a mean, a dishonest act, to receive money for a vote; and they will also admit that a vote ought to be given to the man whom the voter thinks best qualified to be a representative. It is also assumed that opinion is more powerful in a dense than in a scattered population, and that the example and the opinion of a few men of character have more weight than the example and opinion of a much greater number of men who have no character or only a bad one. Now, when bribery is forbidden by law, it must be done secretly: when it is forbidden by opinion, it will for that reason also be done secretly; and there are many acts the public doing of which is more restrained by opinion than by law. There are some acts which the law can hardly reach, and yet men do not for that reason take the less pains to do them secretly. If the buying of votes were not a legal offence, it is true that the purchase might be made openly. But it is not probable that it would be so; for there is no reason why that bribery which is now known or believed to be done in secret, and is condemned not because it is illegal, but for other reasons, would receive less condemnation if it were done openly. Nor is it probable that many candidates who now give bribes through agents who take all possible means to conceal themselves and their employers, in order to avoid

legal penalties, would choose to let their agents do it openly, simply because the legal penalties were removed. It is concluded, then, that the attempt would be to do it secretly from various motives, and mainly from respect to opinion, which condemns the act. But as the only fear would be the fear of opinion, it is certain that, though done secretly, it would not be managed with all the caution that it now is, and that the fact of a candidate being a purchaser of votes, or the fact of money being paid for votes, would be known beyond all doubt. As the law now stands, it is a very difficult thing to bring the proof of bribery home to a candidate; so expert are the agents in all the means for baffling investigation. When bribery is said and believed to have been practised at an election, who will undertake to prove that the candidate was privy to it, though he may be able to prove that large sums were expended in bribery? But if it should be known beyond all doubt that a man purchased votes at an election, or if it should be known beyond all doubt that money was given for votes, and if the fact were so notorious that it could be published with safety, either a man would on that account not buy votes at all, or that opinion does not exist against bribery which we have assumed to exist. If it does exist, in order to prevent bribery we must operate on the giver of the bribe rather than the receiver; on the few who can be dealt with, rather than on the many. It is here assumed that if bribery should be notoriously practised at an election, every body would believe that the candidate on whose behalf money was given, was privy to it or consented to it. Whether the money was his own or another person's, makes no difference in his moral offence, if he consents to have his seat by such means; and he who openly published the fact of bribery and charged the candidate with it, would do good service, and should need no legal defence except to prove the fact.

Bribery is most practicable and is most practised when the constituencies are small. When they are large and scattered over a large surface, bribery is also easily practicable. It is also practicable

and practised even when the constituencies are large and collected on a comparatively small surface; and it may cost no more to bribe a considerable portion of such constituencies than to bribe the whole or a majority of a small constituency. But the fewer persons there are to deal with, the less is the chance of detection; and therefore if the same sum will secure a seat in a small and in a large constituency, the small constituency appears to offer the better opportunity to the briber. Now as small constituencies may be and are bribed under the existing laws, so they might be bribed if there were no penalties against bribery. But for the reason already given the candidate would do it secretly, and yet the fact of bribery might become notorious, and the condemnation of opinion might fall upon him. At any rate there is no reason for supposing that there would be more bribery in small constituencies than there is at present, if the penalties against bribery were repealed.

The modes suggested for preventing bribery are by penal enactments or by secret voting, or by both. As to penal enactments, many things have been and may be suggested; but the history of legislation teaches us that the ingenuity of the law-maker is always left far behind by the ingenuity of the law-breaker. It is impossible to say that any provision of any kind would exclude all the means of evading a law which have been and may be devised. If penal enactments however could greatly diminish bribery or reduce it to a small amount, the object would be substantially accomplished. But experience also teaches that the success of laws in preventing things forbidden is not exactly in proportion to the severity of the enactments.

The arguments urged to show that secret voting would greatly reduce the amount of bribery are insufficient: in the case of small constituencies, the arguments fail; in the case of large constituencies, secret voting might render bribery somewhat more troublesome. But it is probable that no penal enactments will ever materially diminish the amount of bribery in small constituencies, and that it will always be practised in such places

and perhaps, in large constituencies also when there is a violent contest, at least as much as if there were no laws against bribery. It remains then to consider what difference there is between the unpunishable traffic in votes and the present practice of selling them secretly in evasion of the law. If votes may be bought and sold like other things, no positive law is violated; but a traffic is carried on in a thing which the judgment of all reflecting persons condemns as demoralizing and as politically dangerous. If votes may not be bought and sold, but still are bought and sold, the law is secretly evaded, and the demoralization and political danger are at least as great as if there were no laws against bribery; unless the fact be that stricter penal laws will make bribery less than it would be without them. Those who think so should aim at improving this part of our penal code, but they should not forget to direct their legislation chiefly against the briber.

The sum is, that the best check on the traffic in votes is to make the constituencies large, and as far as possible to concentrate them; and further to assimilate them to one another as much as possible, and so that every electoral district shall contain a large number of persons whose condition and station in society render them not accessible to the ordinary means of bribery which a candidate can command. Small constituencies, whatever might be the qualification of the constituents, would be accessible to bribery. For it is a political principle which should not be overlooked, that all men may be bribed, but that different amounts and even different modes of bribery must be applied to different persons; and also that a man might accept a bribe for his vote, and at the same time sincerely condemn bribery. It is generally assumed that the poor are most ready to sell their votes—a fact which is not proved by experience; unless the word poor shall mean a man who is in want of money. But a man may be poor as compared with another, and yet may be better able to supply the wants incident to his station in life than another who is absolutely richer. It is he who is destitute of principle who

may be most easily bribed, even if he is above want, and he who, whether he has principle or not, is in want of money to supply his necessities: the guilt of him who takes a bribe, merely because he loves it, is inexcusable; the offence of him who sells his vote to supply his necessities, has its excuse. But what excuse is there for the man who buys the unwilling vote of a starving man? If it should be said that a less sum will buy a dishonest poor man's vote than that of his dishonest richer neighbour, the proposition would be true, but not fruitful in any practical consequences.

Every elector may be compelled to take the oath against bribery and corruption at the time when he gives his vote. Blackstone observes, "It might not be amiss if the member elected were bound to take the oath [against bribery and corruption]; which in all probability would be much more effectual than administering it only to the electors." If any party should be compelled to take such an oath or make such a declaration, it certainly should be the candidate. It would not be difficult to frame an oath or declaration so comprehensive as to include every possible mode of bribery that could be practised by a candidate or by his agent, or by anybody else with his knowledge and consent. The Romans directed all their legislative measures against the candidate, because it was easier to deal with him than all the electors, and because the proof of bribery is easier, when the receiver is not punishable, but the giver is. The English legislation punishes both electors and candidates when bribery is proved, and so renders the proof of bribery almost impossible; and it does not require from the candidate the security of the oath or the declaration that may be required of the elector. It is difficult to understand how it should be supposed, as some suppose, that a declaration from a candidate might not be made effectual, that is, so full and complete as to prevent him from taking the oath or making the declaration if he was privy to bribery; and it is still more difficult to understand why the experiment has not been made, except on the supposition that the members of the

legislature have not hitherto been in earnest in their attempts to prevent bribery at elections.

If there are to be penalties for bribery at elections, they should fall solely on the candidates. It may be objected that if this were so, attempts would be made in the heat of contested elections to charge a man with bribery who was innocent of it, and it is easy to suppose that unprincipled men would sometimes attempt to maintain such a charge. But as the proof of bribery by a candidate is not easy, even when he has actually bribed, it would not be made easier if he had not bribed. And as the case against him should be proved by most unexceptionable evidence, so the failure to substantiate a charge should be visited with costs heavy enough to deter dishonest men from making it. There remains a difficulty which arises out of the expenses incident to elections as they are now carried on, which are paid by the candidate, and are not expenses incurred for the purpose of buying votes directly or indirectly: these are expenses of printing, of committee-rooms, and of other things which are incident to what is considered fair canvassing. If public opinion were what it ought to be, or if the system of representation were placed on a sound basis, the candidate should pay nothing. The necessary expenses should be paid by the electoral district. There are no doubt difficulties connected with this branch of the subject, which could only be satisfactorily removed by those who are fully conversant with the nature and practice of elections. When the legislature shall take these matters in hand, and fairly grapple with all the difficulties attendant on elections, people will then believe that they really wish to put an end to the corrupt purchase of votes; when they shall see the legislature attempt to secure the purity of the elected as much as the purity of the electors, and not visit with equal or similar penalties the man who attempts to buy his way into the House of Commons by violating the law, and the man who assists him by taking the bribe that is offered.

The effect that secret voting might probably have in preventing bribery, has been much considered of late years and

with great ingenuity of argument on both sides. 'An Argument in favour of the Ballot,' by W. D. Christie, M.P., contains also reference to the opinions of the late Mr. Mill, Mr. Grote, and others on this subject. A pamphlet entitled 'Is the Ballot a Mistake?' by S. C. Denison, contains, among other arguments against the ballot, the argument against its being likely to prevent bribery, and also much valuable historical information on the subject of voting at elections.

The mode in which bribery was managed at the election at Sudbury in 1841 is explained in the 'Report of the Commissioners to inquire into the existence of Bribery in the Borough of Sudbury, 1844.' It was fully proved that "Systematic and extensive Bribery prevailed at the last election of Members of Parliament in this Borough." (*Commissioners' Report.*) Sudbury was disfranchised in 1844 by the act 7 & 8 Vict. c. 53.

The mode of investigating alleged cases of bribery by Election Committees is explained under ELECTIONS. The House of Commons have shown on several recent occasions a determination not to flinch from investigating cases of bribery; a circumstance which encourages us to expect that the subject will soon receive from them the consideration that its importance entitles it to. [CHILTERN HUNDREDS.]

BRICK, used in building, and too commonly known to require description. It is noticed here as an article on which a tax is levied. The activity of this manufacture is one of the most unerring indications of prosperity. In 1756 a tax on bricks and tiles was proposed by the ministry, but they were forced to give it up. (*Walpole's Letters*, iii. 203.) Mr. Pitt proposed bricks as an article of taxation in his budget of 1784; and though the opposition to such a tax was very great, his measure was carried, and an excise duty upon them was imposed by 24 Geo. III. c. 24. The duty was at first 2s. 6d. per 1000 on bricks of all kinds, or less than one-half of the present rate of duty. By 34 Geo. III. c. 15, an additional duty of 1s. 6d. per 1000 was imposed. In 1802 distinctions, which are still retained, were introduced in the denominations of bricks,

and they were subjected to different rates of duty. (43 Geo. III. c. 69.) The duties have been increased at different times, and are now as follows:—Bricks not exceeding 10 inches long, 3 inches thick, and 5 inches wide, are charged 5s. 10d. per 1000; exceeding these dimensions, 10s.; smoothed or polished bricks, not exceeding 10 inches by 5, are charged 2s. 5d. per 100; and exceeding these dimensions, 4s. 10d. per 100. Ireland is exempted from duty. The duty on tiles was repealed in 1833. The number of bricks brought to charge, and the amount of duty, was as follows, in 1840-1-2 and 3:—

	Number.	Duty.
1840	1,725,628,383	£524,420
1841	1,463,257,575	449,060
1842	1,303,814,731	400,086
1843	1,184,388,666	363,375

In 1842 the duty charged in England was 390,210*l.* on 1,271,872,112 bricks, and in Scotland 9875*l.* on 31,942,619 bricks. The number made in England and Scotland, at different periods within the present century, has been as follows:—

	England.	Scotland.	Total.
1802	698,596,954	15,291,789	713,888,743
1811	950,547,173	18,765,582	969,312,755
1821	899,178,510	14,052,590	913,231,100
1831	1,125,462,408	27,586,173	1,153,048,581

The difference between 1821 and 1840 is nearly 90 per cent. The increase in houses somewhat exceeds the increase of population; for while the population of England and Wales, from 1831 to 1841, increased 14.5 per cent., the increase of houses was 18.6 per cent.; and the actual increase from 1831 to 1841 in England and Wales was 515,813 houses: the total number returned in 1841 was 3,142,031. It is to the increase of manufactories and the construction of railroads that we must look for the great increase in the trade of brick-making. As many bricks have been used in a single railway tunnel (the Box tunnel on the Great Western railway) as have been made in Scotland in a year. The number of bridges on a line of railway is said to average  $2\frac{1}{2}$  per mile, and in their construction a very large number of bricks is used. There are several viaducts in which above eleven million bricks have been required. A greater number of bricks is made in Middlesex and Lan-

cashire than in any other part of the kingdom. In 1838 the duty on bricks in England and Wales amounted to 419,103*l.*; and the amount contributed in the Manchester collection was 33,967*l.*, or nearly one-tenth of the whole. In 1836 the duty for the same collection was 56,379*l.* The demand for bricks for the metropolis is principally shown by the duty obtained in the following Excise collections:—London, 20,319*l.*; Uxbridge, 21,225*l.*; Rochester, 20,247*l.*

The number of brickmakers (that is, persons having brick-kilns) in England in 1835 was 5711, and in Scotland 128. In 1841 the number of persons employed in brickmaking, according to the census, was 18,363 for Great Britain, of whom 470 were females. The number for each country separately was, England, 16,840; Wales, 312; and Scotland, 1142.

The kind of building material in use in different parts of the kingdom is determined in some measure by natural causes. In Scotland, for example, few bricks are used, because an untaxed material, equally suitable, is everywhere abundant.

The duty is imposed when the brick is in a wet state, when, in fact, it is a lump of clay; and it is necessary to make an allowance, as compensation for bricks destroyed in the kiln, or injured by the weather and other causes: this allowance is 10 per cent. The duty of 5s. 10d. per 1000 on common bricks is said to be equal to an addition of 8s. to the price, which is about one-third of their value. The value of bricks made annually is not less than 1,500,000*l.* taking one year with another. There is a duty on the importation of bricks of 15s. per 1000, and 7s. 6d. if from British possessions.

Looking at the state of the dwellings of the poor in this country, the tax on bricks must be regarded as an impolitic tax, like all other taxes on building materials. The legislature has evidently thought it so as far as churches are concerned, by allowing a drawback on these duties which, on an average, saves nearly 300*l.* for each church. The drawback allowed on materials used in building the church of St. Pancras, London, was 3653*l.*



Another objection to the tax is, that it is a charge on one kind of material from which others, used for the same purpose, are exempt. When the duty on bricks was first imposed, the brickmakers were told that other kinds of building materials should also be taxed, and a heavy customs' duty was laid on stones and slate; but the effect was felt to be injurious, as an obstruction to such works as docks, bridges, &c. The duty on stone was therefore first repealed by 4 Geo. IV. c. 59, and next the duty on slates, about six years afterwards, by 1 & 2 Will. IV. c. 52. There was immediately a large increase in the consumption of slates, and as a matter of justice the duty on tiles was repealed. As there is now no duty either on stone or slate, it is clear that the conditions held out to the brickmakers, when the duty was first imposed on their manufacture, have been violated. The distinctions in the rates of duty occasion a good deal of trouble, without the revenue being adequately benefited. In 1835 the duty on polished bricks did not amount to 5000*l*. The charge on these bricks is also a check upon ornamental architecture. The duty on bricks is precisely one of that class which should be repealed, and the deficiency made up by some other tax that would bear equally on all who are able to pay it. The brick duty is the subject of the 18th Report of the Commissioners of Excise Inquiry, issued in 1836.

**BRIDEWELL**, a name frequently given to houses of correction. St. Bride's well, near the church of St. Bride, in Fleet Street, was one of the holy wells of London, and in its vicinity Edward VI. founded an hospital, which was afterwards converted into a receptacle for disorderly apprentices, in fact, into a House of Correction, for which purpose it is still used. Houses of correction in different parts of the country are called bridewells, in consequence of the hospital in Blackfriars having been the first place of confinement in which penitentiary amendment was a leading object.

**BRIDGES** are of two classes, public and private. Public bridges may be considered either as county bridges or as

highways, although the principle of that distinction does not seem very clear. Every county bridge is a highway, inasmuch as it is a bridge over which a highway passes; it is therefore in that respect strictly a highway: so also is every other public bridge over which a highway passes. The usual distinction drawn between them is derived from the nature of the space over which the bridge gives a passage. A county bridge, or, in other words, a bridge which the county is bound to repair, is usually defined to be "a common and public building over a river or water flowing in a channel, more or less definite; whether such river or channel is occasionally dry or not." This is evidently a very loose definition, for it does not prescribe the width of the river, or the nature of its channel; but it seems clear that a county bridge must pass over a water, as the county would certainly not be bound to repair a bridge erected across a ravine, or over an ancient road crossed by a new road, having no reference to water. A county bridge may be either a foot, horse, or carriage bridge. A private bridge is any bridge which does not answer the description of a county bridge or a public highway. It is subject to no other laws than the general laws of property.

The liability to repair a county bridge depends either on the common law or on the statute law. By the common law the expense of maintaining both county bridges and highways is to be defrayed by the public, this having been part of the *trinoda necessitas* to which every man's estate was formerly subject. [*TRINODA NECESSITAS.*] But the burden of repair of county bridges is thrown on the whole county, that of highways on the inhabitants of the parish wherein such highways lie. *Prima facie*, therefore, by the common law the whole county is liable to repair a county bridge; but they may rebut this presumptive liability by showing that for some reason or other the burden has been shifted from them on another. They may either show that a hundred, or a parish, or some other known portion of a county is by custom chargeable with the repair of a bridge erected within it; or that some person,

individual or corporate, is liable to that expense. In the case of private individuals, such liability may depend either on tenure; that is, by reason that they and those whose estate they have in the lands or tenements are liable in respect thereof;—or on prescription. In the case of corporate bodies, on prescription only. With regard to corporate bodies, Lord Coke says, "If a bishop or prior, &c. hath at once or twice of almes repaired a bridge, it bindeth not (and yet is evidence against him, until he prove the contrary); but if time out of mind they and their predecessors have repaired it of almes, this shall bind them to it." (2 *Inst.* 700.) Any bridge answering the definition above given of a county bridge may become a charge upon the county even though not originally built by the county; as, for instance, if it be built by the crown or by a private individual: but not every bridge which answers the above definition is therefore chargeable to the county for repair, unless it be also used by and useful to the public. The public use and benefit seem to be the criterion: and if a private individual build a bridge of any sort, which is principally for his own benefit and only collaterally of benefit to others, he will be liable to the repair, and not the public: but where the public derive the principal benefit, they must sustain the burden of repairing it, on the ground that it would greatly discourage public-spirited persons from erecting useful bridges if they were ever after to be burdened with the costs of repair. The county are even liable to the repair of a public bridge erected by commissioners under an act of parliament, even though the commissioners are empowered to raise tolls in order to support it, or though other funds are provided for the repairs; unless there be a special provision for exonerating them from the common law liability, or transferring it to others. This common law liability of a county to repair a public bridge is so strong, that although it has been erected and constantly repaired by trustees under an act of parliament, and although there are funds for the repairs, the county are still liable to repair it. And where trustees under a turnpike act build a bridge across a

stream, where a culvert would have been sufficient, but a bridge was better for the public, it was held that the county could not refuse to repair such bridge on the ground that it was not absolutely necessary.

The first statute on this subject is the 22 Henry VIII. c. 5, called "the Statute of Bridges." This statute is merely in affirmance of the common law. In course of time, owing to the indistinctness of the principle on which public bridges were divided into county bridges and highways, it was found expedient to pass an act to clear up the doubts and difficulties arising from this principle. In order, therefore, to ascertain more clearly the description of bridges hereafter to be erected, which inhabitants of counties shall and may be bound or liable to repair and maintain, it is enacted by stat. 43 Geo. III. c. 59, § 5, that no bridge hereafter to be erected in any county at the expense of any individual or private person, body politic or corporate, shall be deemed to be a country bridge, unless it shall be erected in a substantial and commodious manner under the direction or to the satisfaction of the county surveyor, or person appointed by the justices of the peace at quarter-sessions to superintend and inspect the work. This act applies only to bridges newly built, and not to those repaired or widened.

It was found in very early times that many practical difficulties arose from the indistinctness of the common law as to the precise limits of a bridge—that is to say, as to the precise point where it ceased to be a bridge and began to be a highway; and vice versâ. This indistinctness gave rise to many disputes about the liability to repair, and it was found expedient to enact, by stat. 22 Henry VIII. c. 5, § 9, that such part and portion of the highways as lie next adjoining to the ends of any bridges within this realm, distant from any of the said ends by the space of 300 feet, be made, repaired, and amended as often as need shall require; and that the justices of the peace should act respecting the repairs of such highways as they were empowered to act respecting the bridges themselves. The effect of this statute was merely to limit

or fix the length of road which the county was to repair at 300 feet. By the common law the county was bound to repair the roadway at the end of every county bridge, but the length was not precisely determined till the passing of the above statute.

But this liability of the county has been very much narrowed by the stat. 5 and 6 Will. IV. c. 50, § 21 (the General Highway Act), which, with respect to bridges to be built after the 20th of March, A.D. 1836, enacts, "that if any bridge shall hereafter be built, which bridge shall be liable by law to be repaired by and at the expense of any county, or part of any county, then and in such case all highways leading to, passing over, and next adjoining to such bridge shall be from time to time repaired by the parish, person, or body politic or corporate, or trustees of a turnpike road, who were by law, before the erection of the said bridge, bound to repair the said highways: provided, nevertheless, that nothing herein contained shall extend to exonerate any county or part of any county from repairing the walls, banks, or fences of the raised causeways and raised approaches to any such bridge or the land arches thereto."

Till late years, no persons could be compelled to build or to contribute to the building of any new bridge, except by act of parliament; and even when the county was bound to repair a bridge, it was not therefore bound to widen it. Nor could the inhabitants of a county by their own authority change the situation of a bridge. But by the stats. 14 Geo. II. c. 33, § 1, and 43 Geo. III. c. 59, § 2, the justices in quarter-sessions are enabled to compel the county to widen or change the situation of old bridges, or build new ones. (See also 54 Geo. III. c. 90, which extends some of the provisions of those statutes.)

With respect to the appointment of surveyors of county bridges, their duties and powers, and the modes in which such powers are to be exercised, see stats. 22 Hen. VIII. c. 5, § 4; 43 Geo. III. c. 59 (coupled with stat. 5 & 6 Will. IV. c. 50); 54 Geo. III. c. 90; 55 Geo. III. c. 143. The various provisions of these statutes are very numerous.

For the mode of taxing and collecting the moneys necessary for the repairs of bridges and the highways at the ends thereof, see stat. 22 Hen. VIII. c. 5; Anne 1. stat. 1, c. 18; 12 Geo. II. c. 29; 52 Geo. III. c. 110; 55 Geo. III. c. 143.

In case of non-repair or nuisances, either to bridges or highways, the modes of prosecution are the same: namely, by criminal information, presentment, or indictment. Generally speaking, an action cannot be maintained against the county by an individual for the non-repair of a county bridge, unless in some cases of special damage accruing to such individual from the non-repair.

A criminal information is very rarely resorted to, and only in cases of either very aggravated neglect, or where there seems to be little chance of obtaining justice by preferring an indictment.

The presentment of a public bridge for non-repairs, &c. may by common law be before the King's Bench or at the Assizes. By the stat. 22 Hen. VIII. c. 5, § 1, presentments may be made before the justices in general sessions, and they may proceed therein in the same manner as the judges of the King's Bench were in the habit of doing, "or as it should seem by their directions to be necessary and convenient for the speedy amendment of such bridges." See also for minor regulations respecting presentments, 1 Anne, sess. 1, c. 18; 12 Geo. II. c. 29, § 13; 55 Geo. III. c. 143, § 5.

The indictment of a county bridge is subject to the same rules as any other indictment. And though the whole county be liable to the repairs, any particular inhabitant of a county, or tenant of land charged to the repairs of a bridge, may be made defendant to an indictment for not repairing it, and be liable to pay the whole fine assessed by the court for the default of repairs, and shall be put to his remedy at law for a contribution from those who are bound to pay a proportionable share in the charge.

The malicious destruction or damaging of public bridges is said to be punishable as a misdemeanour at common law, since it is a nuisance to all the king's subjects. By 7 & 8 Geo. IV. c. 30, § 13, it is enacted, "that if any person shall unlaw-

fully and maliciously pull down or in anywise destroy any public bridge, or do any injury with intent, and so as thereby to render such bridge, or any part thereof, dangerous or impassable, every such offender shall be guilty of felony."

For further information, see Lord Coke's 'Second Inst. ; Burn's 'Justice ;' Russell 'On Crimes.' For the law of bridges, viewed as highways, see WAYS.

**BRIEF** (in law) means an abridged relation of the facts of a litigated case, with a reference to the points of law supposed to be applicable to them, drawn up for the instruction of an advocate in conducting proceedings in a court of justice. Briefs vary in their particular qualities according to the nature of the court in which the proceedings are pending, and of the occasion in which the services of an advocate are required ; but in general they should contain the names and descriptions of the parties, the nature and precise stage of the suit, the facts of the litigated transaction, the points of law intended to be raised, the pleadings, the proofs, and a notice of the anticipated answers to the client's case. It is the practice to endorse on the brief the fee which is to be paid to the advocate ; and the general usage is to pay the fee when the brief is delivered to the advocate, or at least as soon as he has discharged his undertaking by arguing the matter in court for which he is retained by the brief.

**BRIEF**, commonly called **CHURCH BRIEF**, or **KING'S LETTER**. This instrument consisted of a kind of open letter issued out of Chancery in the king's name, and sealed with the privy seal, directed to the archbishops, bishops, clergymen, magistrates, church-wardens, and overseers of the poor throughout England. It recited that the crown thereby licensed the petitioners for the brief to collect money for the charitable purpose therein specified, and required the several persons to whom it was directed to assist in such collection. The origin of this custom is not altogether free from doubt ; but as such documents do not appear to have been issued by the crown previously to the Reformation, they may possibly be de-

rived from the papal briefs which, from very early periods of the history of the church, were given as credentials to mendicant friars, who collected money from country to country, and from town to town, for the building of churches and other pious uses. It is probable that, as soon as the authority of the pope ceased in England, these briefs began to be issued in the king's name. They appear to have been always subject to great abuse ; and the 4 Anne, c. 14, after reciting that "many inconveniences arose and frauds were committed in the common method of collecting charity money upon briefs," enacted a variety of provisions for their future regulation, and, among others, prohibited, by heavy penalties, the practice which had previously prevailed, of farming briefs, or selling, upon a kind of speculation, the amount of charity-money to be collected. Still these provisions were evaded, and heavy abuses arose ; and the collection by briefs in modern times was found to be a most inconvenient and expensive mode of raising money for charitable purposes. According to the instance given in Burn's 'Ecclesiastical Law,' tit. "Brief," the charges of collecting 614*l.* 12*s.* 9*d.*, for repairing a church in Westmoreland, amounted to 330*l.* 16*s.* 6*d.*, leaving therefore only a clear collection of 283*l.* 16*s.* 3*d.* The patent charges amounted to 76*l.* 3*s.* 6*d.*, and the "salary" for 9986 briefs at 6*d.* each, to 249*l.* 13*s.*, and an additional "salary" for London 5*l.* This expensive and objectionable machinery (in the exercise of which the interests of the charity to be promoted were almost overwhelmed in the payment of fees to patent officers, undertakers of briefs and clerks of the briefs, charges of the king's printers, and other contingent expenses) was abolished by the 9 Geo. IV. c. 42, which wholly repealed the statute of Anne, except as to briefs then in course of collection. By the 10th section of 9 Geo IV. c. 42, it is enacted, "that as often as his Majesty shall be pleased to issue his royal letters to the Archbishops of Canterbury and York respectively, authorizing collection within their provinces for the purpose of aiding the enlarging, building, rebuilding, or repairing of

churches and chapels in England and Wales, all contributions so collected shall be paid over to the treasurer of the 'Incorporated Society for promoting the enlargement, building, and repairing of churches and chapels,' and be employed in carrying the designs of the society into effect." This statute does not interfere with the authority of the crown as to granting briefs; its only effect is to abolish the machinery introduced by the statute of Anne. Briefs may be issued under the common law authority of the crown. The latest brief, or king's letter, was issued for the purpose of collecting subscriptions to relieve the distress of the manufacturing districts in 1842.

**BRIEF, PAPAL**, is the name given to the letters which the pope addresses to individuals or religious communities upon matters of discipline. The Latin name is *Brevis*, or *Breve*, which in the Latinity of the lower ages meant an epistle or written scroll. The French in the old times used to say *Brief* for a letter, and the Germans have retained the word *Brief* with the same meaning to this day. The difference between a brief and a bull in the language of the Papal chancery is this: the briefs are less ample and solemn instruments than bulls, and are like private letters addressed to individuals, giving the papal decision upon particular matters, such as dispensations, release from vows, appointments to benefices in the gift of the see of Rome, indulgences, &c.; or they are mere friendly and congratulatory letters to princes and other persons high in office. The apostolical brief is usually written on paper, but sometimes on parchment; it is sealed in red wax with the seal of the Fisherman (*sub annulo Piscatoris*), which is a symbol of St. Peter in a boat casting his net into the sea. (Ciampini, *Dissertatio de Abbreviatorum Munere*, cap. iii.) A bull is a solemn decree of the pope in his capacity of head of the Catholic church: it relates to matters of doctrine, and as such is addressed to all the members of that church for their general information and guidance. The bulls of excommunication launched by several popes against a king or a whole state are often recorded in history. The briefs are not

signed by the pope, but by an officer of the papal chancery, called *Segretario dei Brevi*: they are indited without any preamble, and, as just observed, are written generally upon paper. The bulls are always on parchment, and sealed with a pendent seal of lead or green wax, representing on one side the heads of St. Peter and St. Paul, and on the reverse the name of the pope and the year of his pontificate: their name comes from the Latin "*bullā*," a carved ornament or stamp. The bulls of indulgences are general, and addressed to all the members of the church; the briefs of indulgences are addressed to particular individuals or monastic orders for their particular benefit.

**BROKER**, a person employed in the negotiation and arrangement of mercantile transactions between other parties, and generally engaged in the interest of one of the principals, either the buyer or the seller, but sometimes acting as the agent of both. As it usually happens that brokers apply themselves to negotiations for the purchase and sale of some particular article or class of articles, they by that means acquire an intimate knowledge of the qualities and market value of the goods in which they deal, and obtain an acquaintance with the sellers and buyers as well as with the state of supply and demand, and are thus enabled to bring the dealers together and to negotiate between them on terms equitable for both. A merchant who trades in a great variety of goods and products drawn from different countries and destined for the use of different classes, cannot have the same intimate knowledge, and will consequently find it advantageous to employ several brokers to assist him in making his purchases and sales. There are separate brokers in London for nearly all the great articles of consumption.

Ship-brokers form an important class in all great mercantile ports. It is their business to procure goods on freight or a charter for ships outward bound; to go through the formalities of entering and clearing vessels at the Custom House; to collect the freight on the goods which vessels bring into the port, and generally to take an active part in the management of all business matters occurring between

the owners of the vessels and the merchants, whether shippers or consignees of the goods which they carry. In the principal ports of this kingdom almost all ship-brokers are insurance-brokers also, in which capacity they procure the names of underwriters to policies of insurance, with whom they settle the rate of premium and the various conditions under which they engage to take the risk, and from whom they receive the amount of their respective subscriptions in the event of loss. Should this loss be partial, it becomes the duty of the broker to arrange the proportions to be recovered from the underwriters. The business of an insurance-broker differs from that of other brokers in one particular. Other brokers, when they give up the name of the party for whom they act, incur no responsibility as to the fulfilment of the conditions of the contract, but an insurance-broker is in all cases personally liable to the underwriters for the amount of the premiums. He does not, on the other hand, incur any liability to make good the amount insured to the owner of the ship or goods, who must look to the underwriter alone for indemnification in case of loss. Under these circumstances, it is the duty of the insurance-broker to make a prudent selection of underwriters. Merchants frequently act as insurance-brokers.

Exchange-brokers negotiate the purchase and sale of bills of exchange drawn upon foreign countries, for which business they should have a knowledge of the actual rates of exchange current between their own and every other country, and should keep themselves acquainted with circumstances by which those rates are liable to be raised or depressed; and they should besides acquire such a general knowledge of the transactions and credit of the merchants whose bills they buy, as may serve to keep their employers from incurring undue risks. Persons of this class are sometimes called bill-brokers; and there is another class called discount-brokers, whose business it is to employ the spare money of bankers and capitalists in discounting bills of exchange which have some time to run before they become due.

Every person desirous of acting as a broker for the purchase and sale of goods within the city of London must be licensed by the lord mayor and court of aldermen, and must be a freeman. The number of admissions annually is from fifty to sixty, and the number retiring is about the same. The applicant must present a petition accompanied by a certificate signed by at least six respectable persons, who must state how long they have known him. He must next attend the court, and answer questions put to him as to his connections and business, and whether he has been insolvent. The question as to his admission is then put, and if carried in the affirmative he is required to attend at the town-clerk's office with three sureties (who need not be freemen), two for his good behaviour as a broker, and one (who may be one of the former two) for his annual payment of the sum of 5*l.* to the city. He is bound himself in the penalty of 1000*l.*, two of the sureties for 250*l.* each, and one for 50*l.* The annual payment claimed by the city can be traced back to the time of Henry VIII., when it was 40*s.*, but was increased to 5*l.* by 57 Geo. III. c. 60. When the above conditions have been complied with, the applicant must attend another court of aldermen, when he is sworn for the faithful discharge of his duties, without fraud or collusion, and to the utmost of his skill and knowledge. He further binds himself not to deal in goods upon his own account—a stipulation which is very commonly broken. It is the indispensable duty of a broker to keep a book in which all the contracts which he makes must be entered, and this book may be called for and received as evidence of transactions when questioned in courts of law. Twelve persons of the Hebrew nation are appointed sworn brokers in the city; and on a vacancy the appointment is sold to the highest bidder, according to Mr. Montefiore's Dictionary of Commerce, and has sometimes fetched 1500*l.* Any person acting as a broker without having procured a licence or paid the fees, is liable to a fine of 100*l.* for every bargain which he may negotiate. The court of aldermen have power to discharge a broker for miscon-

duct, but only three cases occurred in the twelve years preceding 1837, in which the penalty of the bond had been enforced. Many persons are allowed to remain on the broker's list who have become bankrupt. The list comes annually under the review of the Committee of City Lands, but solely with reference to the annual payment. There is a condition in this bond, which the brokers are sworn to, that renders it imperative on them to declare in writing the names of all whom they shall know to exercise the office unauthorisedly; but as few persons are willing to appear in the invidious light of an informer, the rule is not observed. The Commissioners of Corporation Inquiry remark, in their Report:—"It seems to be the prevalent opinion in the City of London, that some superintendence of brokers is necessary, and that traders, especially strangers, are liable to gross frauds if it is not efficient;" but they are not satisfied that it is now lodged in the proper quarter, and they doubt, if, in the case of stock-brokers, the present conditions of the sworn broker's bond could be enforced at all. There is an officer, appointed by the city, called the collector of broker's rents, who is paid  $7\frac{1}{2}$  per cent. on the gross amount collected. His income is from 265*l.* to 275*l.* per annum. He requires the brokers to renew their sureties when necessary, and looks generally to the carrying out of the regulations of the court of aldermen.

In the Guild Roll of Leicester, under date 1289-90, there is an entry of an order which prohibits any broker or any other stranger approaching the balances in the merchants' houses, except they were buyers or sellers; and for a fourth breach of this regulation the offender was to be placed under the "ban" of the guild for a year and a day.

The business of a stock-broker is that of buying and selling, for the account of others, stock in the public funds, and shares in the capitals of joint-stock companies. They are not a corporate body, but belong to a subscription-house, and are admitted by a committee. About one-half of them are sworn brokers. A few years ago the City obtained a verdict in a prosecution of some members of the

Stock Exchange for acting as brokers without being duly admitted by the Court of Aldermen. The brokers object to the regulation which requires them to make known the name of the principal for whom they act and prohibits them from dealing themselves; both of which conditions are incompatible with the nature of their business. The acts of parliament, by which the proceedings of stock-brokers should in certain cases be regulated (7 Geo. II. c. 8, and 10 Geo. II. c. 8), have long been dead letters; more especially the enactment that every bargain or contract for the purchase and sale of stock which is not made *bonâ fide* for that purpose, but is entered into as a speculation upon the fluctuations of the market, is declared void, and all parties engaging in the same are liable to a penalty of 500*l.* for each transaction.

Within the last few years there has been a large increase in the number of share-brokers, not only in London, but in all the large towns, where formerly there were scarcely any persons of this class. They transact business and effect transfers in canal and railway shares, and in the shares of joint-stock banks, gas, water, and other local works which are established by a numerous body of proprietors. The capital already invested in railways is not less than 80,000,000*l.*, or one-tenth of the national debt, and this large sum is divided into shares of from 25*l.* to 100*l.* each, which fluctuate in value from day to day, and by the facility with which they may be transferred encourage speculative purchasers amongst persons of almost every class, from the large capitalist to those who can only raise a sufficient sum to buy a single share. The business of this comparatively new class of brokers is also much increased by the immense number of new railroads projected, of which in 1844 there were above two hundred brought forward, the shares in all of which soon become an object of traffic. It has been said that one hundred and thirty-one of the railways of 1844 would require capital to the amount of 95,000,000*l.* The 'Bankers' Magazine' (December, 1844) gives the following as the scale of charges in use among

share-brokers: when the purchase-money of the share is

Under £5	.	.	1s. 3d. per share.
" 20	.	.	2 6 "
" 50	.	.	5 0 "
" 100	.	.	10 0 per cent.

There is besides a stamp-duty payable on transfers of railway-shares and shares in joint-stock companies generally. The stamp-duty is 10s. when the purchase-money of the share is under 20l.; above 20l. and under 50l. it is 1l.; and rises by a graduated scale according to the amount of purchase-money.

On completing a transaction in railway or other shares of a joint-stock company, the brokers give a "contract note" to their employers as evidence of the nature of the business done on their account. By 7 & 8 Vict. c. 110, the sale and transfer of railway shares before the "complete registration" of the Railway Company is placed on the same footing as "time bargains" on the Stock Exchange, and cannot be enforced in a court of law. § 26 enacts, "with regard to subscribers and every person entitled or claiming to be entitled to any share in any Joint-Stock Company," formed after 1st November, 1844, that "until such Company shall have obtained a certificate of 'complete registration,' and until such subscriber or person shall have been duly registered as a shareholder" in the office of the London Register, "it shall not be lawful for such person to dispose by sale or mortgage of such share, or of any interest therein," and all contracts to this effect shall be void, and "every person" entering into such contracts shall forfeit not less than 10l. All Companies begun after the 5th of September, 1844 (the date when the act was passed), are subject to this enactment (§ 60).

It is usual to apply the name of broker to persons who buy and sell second-hand household furniture, although such an occupation does not bear any analogy to brokerage as here described: furniture dealers buy and sell generally on their own account, and not as agents for others. These persons do indeed sometimes superadd to their business the appraising of goods and the sale of them by public auction under warrants of

distress for rent, for the performance of which functions they must provide themselves with a licence, and they come under the regulations of an act of parliament (57 Geo. III. c. 93). [APPRAISER.]

Custom-house brokers, or, as they are more commonly termed, agents, are licensed by the commissioners of Customs, and no person without such licence can transact business at the Custom-house or in the port of London relative to the entrance or clearance of ships, &c.

The business of a pawnbroker is altogether different from that of the commercial brokers here described. [PAWN-BROKER.]

BROTHEL. [PROSTITUTION.]

BUDGET. The annual financial statement which the Chancellor of the Exchequer, or sometimes the First Lord of the Treasury, makes in the House of Commons, in a committee of ways and means, is familiarly termed "the Budget." The minister, whichever of them it is, gives a view of the general financial policy of the government, and shows the condition of the country in respect to its industrial interests. This is of course the time to present an estimate of the probable income and expenditure for the twelve months ending the 5th of April in the following year; and to state what taxes it is intended to reduce or abolish, or what new ones to impose; and this is accompanied by the reasons for adopting the course which the government proposes. The speech of the Chancellor of the Exchequer in bringing forward the budget is naturally looked forward to with great interest by different classes: if the revenue be in a flourishing condition and a surplus exists, all parties are anxious to learn how far their interests will be affected by a reduction of taxes; and if the state of the national finances render it necessary to impose additional taxes, this interest is equally great. The Chancellor of the Exchequer concludes by proposing resolutions for the adoption of the committee. These resolutions, "when afterwards reported to the House, form the groundwork of bills for accomplishing the financial objects proposed by the minister." (May's *Parliament*, p. 331.)

BUILDING, ACTS FOR REGU-



LATING. Provisions for regulating the construction of buildings are generally introduced into acts for the improvement of towns. To permit houses of wood or thatched roofs in confined and crowded streets, would be to sacrifice the public welfare to the caprice or convenience of individuals. There is no general measure ensuring uniformity of regulations for buildings throughout the country. In the session of 1841 the Marquis of Normanby, then a member of the government, brought in a bill "for the better Drainage and Improvement of Buildings in large Towns and Villages," but it did not pass; and a bill of a similar nature was unsuccessful in the session of the following year. In the session of 1844, however, an act was passed (7 & 8 Vict. c. 84) entitled 'An Act for Regulating the Construction and the Use of Buildings in the Metropolis and its Neighbourhood;' and this measure, though applicable at present only to London, promises to be an important step towards improving the condition of large towns, and with certain modifications it will probably be extended to other places. The act came into operation on the 1st of January, 1845. London has had Building Acts ever since the reign of Queen Anne; but their object was chiefly to enforce regulations calculated to check the spread of fire. The last Building Act, commonly called Sir Robert Taylor's Act (14 Geo. III. c. 78), was passed in 1774, "for the further and better regulation of buildings and party walls, and for the more effectually preventing mischiefs by fire." It extended to the cities of London and Westminster, and their liberties and other places within the bills of mortality, and to the parishes of St. Marylebone, Paddington, St. Pancras, and St. Luke's, Chelsea. The administration of the act was confided to district surveyors, each of whom had independent authority within his own district; but the magistrate at the nearest police-office might enforce or not, at his own discretion, the decisions of the surveyor. The technical regulations of this act were many of them, generally speaking, of so impracticable a nature that their evasion was connived at by the officers appointed to superintend the exe-

cution of the law; and it did nothing to discourage the erection of imperfect buildings in districts which have become a part of the metropolis since it was passed. Whether the new act (7 & 8 Vict. c. 84) contains regulations equally impracticable remains to be seen. Some of them probably are of this nature, as may be expected in attempts to legislate on technical matters of detail; but the object of the act is excellent, and any defects in carrying it out may be corrected without much difficulty. The removal of sources of danger and disease in crowded neighbourhoods, by enforcing ventilation and drainage, and by other means, is in itself both wise and benevolent. The window tax will prove, in several respects, a great impediment to the act being fully carried out.

The objects of the Metropolitan Buildings Act may be gathered from the preamble, which is as follows:—"Whereas by the several acts mentioned in schedule (A.)\* to this Act annexed provisions are made for regulating the construction of buildings in the metropolis, and the neighbourhood thereof, within certain limits therein set forth; but forasmuch as buildings have since been extended in nearly continuous lines or streets far beyond such limits, so that they do not now include all the places to which the provisions of such acts, according to the purposes thereof, ought to apply, and moreover such provisions require alteration and amendment, it is expedient to extend such limits, and otherwise to amend such acts: and forasmuch as in many parts of the metropolis and the neighbourhood thereof, the drainage of the houses is so imperfect as to endanger the health of the inhabitants, it is expedient to make provision for facilitating and promoting the improvement of such drainage; and forasmuch as by reason of the narrowness of streets, lanes, and alleys, and the want of a thoroughfare in many places, the due ventilation of crowded neighbourhoods is often impeded, and the health of the inhabitants thereby endangered, and

\* These acts are 14 Geo. III. c. 78, partly repealed; 50 Geo. III. c. 75, wholly repealed; and 3 & 4 Vict. c. 85, repealed so far as it relates to flues and chimneys.

from the close contiguity of the opposite houses the risk of accident by fire is extended, it is expedient to make provision with regard to the streets and other ways of the metropolis for securing a sufficient width thereof: and forasmuch as many buildings and parts of buildings unfit for dwellings are used for that purpose, whereby disease is engendered, fostered, and propagated, it is expedient to discourage and prohibit such use thereof: and forasmuch as by the carrying on in populous neighbourhoods of certain works, in which materials of an explosive or inflammable kind are used, the risk of accidents arising from such works is much increased, it is expedient to regulate not only the construction of the buildings in which such dangerous works are carried on, but also to provide for the same being carried on in buildings at safe distances from other buildings which are used either for habitation or for trade in populous neighbourhoods: and forasmuch as by the carrying on of certain works of a noisome kind, or in which deleterious materials are used, or deleterious products are created, the health and comfort of the inhabitants are extensively impaired and endangered, it is expedient to make provision for the adoption of all such expedients as either have been or shall be devised for carrying on such businesses, so as to render them as little noisome or deleterious as possible to the inhabitants of the neighbourhood; and if there be no such expedients, or if such expedients be not available in a sufficient degree, then for the carrying on of such noisome and unwholesome businesses at safer distances from other buildings used for habitation: and forasmuch as great diversity of practice has obtained among the officers appointed in pursuance of the said acts to superintend the execution thereof in the several districts to which such acts apply, and the means at present provided for determining the numerous matters in question which constantly arise tend to promote such diversity, to increase the expense, and to retard the operations of persons engaged in building, it is expedient to make further provision for regulating the office of surveyor of such several districts, and to provide for the

appointment of officers to superintend the execution of this Act throughout all the districts to which it is to apply, and also to determine sundry matters in question incident thereto, as well as to exercise in certain cases, and under certain checks and control, a discretion in the relaxation of the fixed rules, where the strict observance thereof is impracticable, or would defeat the object of this Act, or would needlessly affect with injury the course and operation of this branch of business: now for all the several purposes above mentioned, and for the purpose of consolidating the provisions of the law relating to the construction and the use of buildings in the metropolis and its neighbourhood, be it enacted," &c.

The principal officers appointed to carry the act into effect are two Official Referees, a Registrar of Metropolitan Buildings, and Surveyors. The immediate superintendence of buildings is confided by the act to the surveyors, who are appointed for each district by the court of aldermen in the city, and by the justices at quarter-sessions for other parts of the district. In all cases of dispute or difficulty the official referees appointed by the Secretary of State and the Commissioners of Woods and Forests will determine the matter, instead of the appeal being to the police magistrates, as was formerly the case. The official referees are also empowered to modify technical rules. The registrar, who is appointed by the Commissioners of Woods and Forests, is required to keep a record of all matters referred to the official referees and to preserve all documents connected with their proceedings.

The third section of the act defines the limits to which the act shall extend, which are as follows:—"To all such places lying on the north side or left bank of the river Thames as are within the exterior boundaries of the parishes of Fulham, Hammer-smith, Kensington, Paddington, Hampstead, Hornsey, Tottenham, St. Pancras, Islington, Stoke Newington, Hackney, Stratford-le-Bow, Bromley, Poplar, and Shadwell; and to such part of the parish of Chelsea as lies north of the said parish of Kensington; and to all such parts and places lying on the south side or right bank of the said river, as are within

the exterior boundaries of the parishes of Woolwich, Charlton, Greenwich, Deptford, Lea, Lewisham, Camberwell, Lambeth, Streatham, Tooting, and Wandsworth; and to all places lying within two hundred yards from the exterior boundary of the district hereby defined, except the eastern part of the said boundary which is bounded by the river Lea."

By § 4 power is given to the queen in council to extend the above limits to any limits within twelve miles of Charing Cross, notice of such extension being published in the 'London Gazette' one month previously.

The surveyor and overseers of the place in which buildings in a ruinous state may be situated, are required to apply to the official referees to authorize a survey to be made thereof. A copy of the surveyor's certificate is to be forwarded to the overseers (or to the lord mayor and aldermen, if within the City of London), and they are required to cause such ruinous building to be securely shored or a sufficient hoard to be put up for the safety of all passengers; and they are also to give notice to the owner to repair or pull down the whole or part of the building within fourteen days. An appeal lies to the official referees, and if the owner refuses to repair or pull down premises certified to be in a ruinous state, this may be done by the overseers, or in the City by order of the lord mayor and aldermen; and the materials may be disposed of to pay the costs of every description which may have been incurred; and if any surplus remains, it is to be paid to the owner. But if the proceeds from this sale of materials are not sufficient to cover the expenses, the deficiency is to be made up by the owner of the property, and may be levied under warrant of distress; and if there are no goods or chattels to levy, the occupier of the premises may be required to pay, and he can deduct the amount from his rent. The same course which the act directs as to buildings in a ruinous state may also be followed in reference to chimneys, roofs, and projections, so far as relates to repairing or making them secure. If the projection be from the front walls of any building and be in danger

of falling, the occupier, or if not the occupier the owner, may be required to take down or secure the same within thirty-six hours; and a penalty of five pounds is incurred for every day during which the projection complained of is allowed to remain unrepaired or in a dangerous state.

The subject of party walls, party fences, and intermixed buildings is regulated by §§ 20 to 39, and the following provisions are made as to their reparation, pulling down, or raising. If the consent of the adjoining owner is not obtained, notice must be given him three months before the work is commenced, and the adjoining owner may obtain an order on application to the official referees for such a modification of the work as will render it suitable to his premises. If the consent of the adjoining owner cannot be obtained, the matter is to be referred to the surveyor, and the official referees may reject or confirm his certificate, and award the proportion of expenses, &c. The decision of the official referees is to be final and conclusive.

The 51st clause provides for a proper drainage. Before the walls of any building shall have been built to the height of ten feet, drains must have been properly built and made good leading into the common sewer, or if there be no sewer within one hundred feet, then to the nearest practicable outlet. If there be a common sewer within fifty feet of a new building, a cesspool must not be made without a good and sufficient drain leading to it. A cesspool under a house or other building must be made air-tight. Privies built in the yard or area of any building must have a door and be otherwise properly inclosed, screened, and fenced from public view.

The act also fixes the width of new streets and alleys. Every street must be of the width of forty feet at the least; and if the buildings be more than forty feet high from the level of the street, the street must be at least equal in width to the height of the houses or buildings. Every alley and every mews must be at least twenty feet in width, and if the buildings are higher, the width must be increased in proportion, so as to be at least equal to the height.

The 53rd clause is of great importance in reference to the sanitary condition of the poor. It provides that from and after July 1, 1846, it shall not be lawful to let separately to hire as a dwelling any room or cellar not constructed according to the rules specified in schedule K, nor to occupy or suffer it to be occupied as such, nor to let, hire, occupy, or suffer to be occupied any such room or cellar, built under ground for any purpose, except for a warehouse or storeroom. The official referees and the registrar of metropolitan buildings soon after the passing of the act issued forms to the overseers of the poor within their district, in order to assist the parochial authorities in making a return, which must be ready by January 1, 1845, of all rooms which under the act are deemed unfit for dwellings, but which are now occupied as such. The building regulations contained in schedule K are as follows:—"With regard to back yards or open spaces attached to dwelling-houses, every house hereafter built or rebuilt must have an enclosed back yard or open space of at the least one square [a square is defined by the act to be 100 square feet], exclusive of any building thereon, unless all the rooms of such house can be lighted and ventilated from the street, or from an area of the extent of at the least three-quarters of a square above the level of the second story, into which the owner of the house to be rebuilt is entitled to open windows for every room adjoining thereto. And if any house already built be hereafter rebuilt, then, unless all the rooms of such house can be lighted and ventilated from the street, or from an area of the extent of at the least three-quarters of a square, into which the owner of the house to be rebuilt is entitled to open windows for every room adjoining thereto, there must be above the level of the floor of the third story an open space of at the least three-quarters of a square. And to every building of the first class must be built some roadway, either to it or to the enclosure about it, of such width as will admit to one of its fronts of the access of a scavenger's cart. With regard to the lowermost rooms of houses, being rooms of which the surface of the floor

is more than three feet below the surface of the footway, and to cellars of buildings hereafter to be built or rebuilt, if any such room or cellar be used as a separate dwelling, then the floor thereof must not be below the surface or level of the ground immediately adjoining thereto, unless it have an area, fireplace, and window, and unless it be properly drained. And to every such lowermost room or cellar there must be an area not less than three feet wide in every part, from six inches below the floor of such room or cellar to the surface or level of the ground adjoining to the front, back, or external side thereof, and extending the full length of such side; such area, to the extent of at least five feet long and two feet six inches wide, must be in front of the window, and must be open, or covered only with open iron gratings. And for every such room or cellar there must be an open fireplace, with proper flue therefrom, with a window-opening of at the least nine superficial feet in area, which window-opening must be fitted with glazed sashes, of which at the least four and a half superficial feet must be made to open for ventilation. With regard to rooms in the roof of any building hereafter built or rebuilt, there must not be more than one floor of such rooms, and such rooms must not be of a less height than seven feet, except the sloping part, if any, of such roof, which sloping part must not begin at less than three feet six inches above the floor, nor extend more than three feet six inches on the ceiling of such room. With regard to rooms in other parts of the building, every room used as a separate dwelling must be of at the least the height of seven feet from the floor to the ceiling.

§§ 54 and 55 provide for the restraint and eventual removal from populous neighbourhoods of trades which are dangerous, noxious, or offensive. Businesses dangerous as to fire must not be nearer than fifty feet to other buildings; and new businesses of this character must be forty feet from public ways. Persons are not in future to establish or newly carry on any such businesses within fifty feet of other buildings or forty feet from public ways; and all such businesses now

carried on within the distances limited by the act must be given up twenty years after the passing of the act. A penalty of 50*l.* is incurred for erecting buildings in the neighbourhood of any such businesses, and 50*l.* per day for carrying on businesses of a dangerous kind contrary to the act. The persons offending may be imprisoned for six months if the penalty be not paid. The businesses of a blood-boiler, bone-boiler, fellmonger, slaughterer of cattle, sheep, or horses, soap-boiler, tallow-melter, tripe-boiler, and any other business offensive or noxious, are to be subject to similar regulations as those deemed dangerous as to fire, and are to be discontinued at the end of thirty years after the passing of the act. Trades deemed nuisances may be removed by purchase at the public cost on memorial by two-thirds of the inhabitants, and on the issue of an order in council. Public gas-works, distilleries, and other works under the survey of the Excise are exempted from the operation of the provisions contained in §§ 54 and 55.

The whole number of clauses in the act is 118; and there are schedules of great length. They involve matters of technical detail, which it would be useless to give: our object is only to exhibit the general character of this important legislative measure.

**BULLETIN**, a French word which has been adopted by the English to signify a short authentic account of some passing event, intended for the information of the public. Bulletin is derived from "*bulle*," a sealed dispatch. (Ducange, *Glossarium*.) When kings and other persons of high rank are dangerously ill, daily bulletins are issued by the physicians, relative to the state of the patient. In times of war, and after a great battle, bulletins are sometimes issued from the head-quarters of the victorious army, and are sent off to the capital to inform the people of the success. This practice became common with the French grand army under the immediate command of the Emperor Napoleon from the time of the campaign of Austerlitz in 1805 till the abdication in 1814.

**BULLION**, a term which is strictly

applicable only to uncoined gold and silver, but which is frequently used in discussions relating to subjects of public economy to denote those metals both in a coined and an uncoined state. In the Bank of England Charter Act (7 & 8 Vict. c. 22) the circulation of notes by the Issue department of the Bank is fixed at a certain amount, and any addition to the circulation must be based on bullion only. The proportion of silver bullion to be retained in the Issue department must not exceed one-fourth part of the gold coin and bullion. All persons may demand of the Issue department notes in exchange for gold bullion at the rate of 3*l.* 17*s.* 9*d.* per ounce of standard gold, to be melted and assayed by persons appointed by the Bank, at the expense of the persons who tender the bullion. [BANK.] For an account of the sources of supply, &c., of gold and silver see **PRECIOUS METALS**.

**BULLS, PAPAL**. Letters issued from the papal chancery, and so named from the *bulle* or leaden seal which is appended to them. The difference between bulls, briefs, and other apostolical rescripts, is noticed under the word **BRIEF**. Bulls are written on parchment. If they regard matters of justice, the seal is affixed by a hempen cord; if of grace, by a silken thread. The seal bears on the obverse heads of St. Peter and St. Paul; on the reverse, the name of the pope, and the date of the year of his pontificate. In France, in Spain, and in most other kingdoms professing the Roman Catholic faith, bulls are not admitted without previous examination. In England, to procure, to publish, or to use them, is declared high treason by 13 Eliz. c. 2. The name bull has also been applied to certain constitutions issued by the emperors. In affairs of the greatest importance bullæ of gold were employed, whence they were called Golden Bulls.

Eleven folio volumes, published at Luxemburg, between 1747 and 1758, contain the bulls issued from the pontificate of Leo the Great to that of Benedict XIV., from A.D. 461 to A.D. 1757. The two most celebrated among them are, that *In Cænâ Domini*, which is read every year, as these words imply, on the day or

the Lord's Supper (Maundy Thursday): it denounces various excommunications against heretics and other opposers of the Romish see: 2, the bull *Unigenitus*, as it is called from its opening words, "*Unigenitus Dei filius*," issued by Clement XI. in 1713, condemning 101 propositions in Quesnel's work, or, in other words, supporting the Jesuits against the Jansenists in their opinions concerning divine grace.

The most remarkable *Imperial Bull* is that approved by the Diet of the Germanic empire in 1356, in which Charles IV. enumerated all the functions, privileges, and prerogatives of the electors, and all the formalities observed in the election of an emperor, which were considered as fundamental laws till the dissolution of the Germanic body in 1806. We believe that the Latin original is still preserved at Frankfort with the golden seal or *bulia*, from which it derives its name, appendant to it.

BURGAGE TENURE denotes the particular feudal service or tenure of houses or tenements in ancient cities or boroughs. It is considered to be a species of socage, as the tenements are holden of the king or other lord, either by a certain annual pecuniary rent, or by some services relating to trade or handicraft, such as repairing the lord's buildings, providing the lord's gloves or spurs, &c., but "no way *smelling* of the plough or tillage" (Somner *On Gavelkind*, 142-148), and having no relation to military service. (Spelman's *Glossary*, *ad verbum*.) The incidents of this tenure, which prevailed in Normandy as well as in England, vary according to the particular customs of each borough, in consequence of the maxim that, in improper feuds (to which class this tenure belongs), the *lex et consuetudo loci* are always to be observed. (Wright's *Tenures*, p. 205.)

Burgage tenure is supposed by Littleton and other writers to have been the origin of the rights of voting for members of parliament in cities and boroughs; and the great variety of those rights is in some measure accounted for by supposing them to be founded upon varying local customs. It is, however, impossible to trace the gradual steps by which the irre-

gular rights of voting in boroughs for members of parliament, which are continued by the Reform Act (2 Will. IV. c. 45) until the extinction of existing interests, were derived from burgage tenure.

BURGESS. [MUNICIPAL CORPORATIONS; COMMONS, HOUSE OF.]

BURGOMASTER, BURGERMEISTER, is the title of the chief magistrate of a municipal town, answering to the English mayor. In the German free towns the *bürgermeister* is the president of the executive council of the republic. This is also the case at Zürich, Basel, Schaffhausen, and some other Swiss cantons; while at Bern, Freyburg, and Luzern the corresponding magistrate is called *schultheiss* (in French "*avoyer*"), and in the rest of the cantons *landamman*; which last is not a German, but a Swiss term.

BURIAL. [INTERMENT.]

BURNEL, ACTON, STATUTE OF. This statute was passed at Acton Burnel, in Shropshire, at a parliament held by Edward I. in the eleventh year of his reign, on his return from Wales. Acton Burnel was never even a market-town, and Leland says (*Itin.* vii. 19) that the parliament was held in a great barn. The date of the statute is October 12, 1283. It is remarkable as a proof of the importance which the mercantile class had acquired, and its object was to recover more quickly debts due to merchants and traders. Hence it is called the Statute of Merchants (*Statutum Mercatorum*).

The preamble recites, that "Forasmuch as merchants which heretofore have lent their goods to divers persons be greatly impoverished because there is no speedy law provided for them to have recovery of their debts at the day of payment assigned; and by reason hereof many merchants have withdrawn to come into this realm with their merchandises, to the damage as well of the merchants as of the whole realm;" and therefore "the king by himself and his council ordain and establish" certain remedies for the evils complained of. (*Stat. of Realm*, i. 53.)

The merchant was to bring his debtor

before the mayor of London, York, or Bristol, or before the mayor and a clerk who was appointed by the king, to acknowledge the debt, and fix a time for payment. The clerk entered the recognizance, and also made a writing obligatory, to which the debtor affixed his seal. The king's seal, provided for the purpose, and kept by the mayor, was likewise appended to the instrument. If the debtor neglected to pay his debt at the time appointed, the mayor ordered his chattels and devisable burgages to be sold, to the amount of the debt, by the appraisement of honest men. The moveables were to be delivered to the creditor if no buyer came forward. In case the debtor's moveables were out of the mayor's jurisdiction, the chancellor was to direct a writ to the sheriff of the county, who was to act with the same authority as the mayor. The statute contains several provisions relating to the sale. To guard against the appraisers' favouring the debtor by fixing too high a price on his goods, they might themselves be forced to take them at their own unfair valuation; and in that case they became answerable to the creditor for the debt. The statute inferred, on the other hand, that if the goods sold below their value, it was the debtor's fault. If the debtor had no effects, he was to be imprisoned until he or his friends had come to some agreement with the creditor; and the creditor was bound to provide him with bread and water, if he were so poor as to be unable to support himself: but the cost of his maintenance added to the original debt, and was required to be repaid before the debtor could obtain his release. The creditor might accept sureties or mainpernors, who by this act placed themselves precisely in the same situation as the debtor; but they were not liable till the goods of the principal had been sold and found insufficient.

The statute of Acton Burnel was further explained and new provisions added by 13 Edw. I. stat. 3, passed in 1285. The first statute appears to have been misinterpreted by the sheriffs, and its execution delayed on malicious and false pretences. The king, therefore, in a parliament held in his thirteenth year, caused the statute of Acton Burnel to be

rehearsed, and another Statutum Mercatorum (13 Edw. I. stat. 3) was passed, which extended and gave additional facilities for enforcing the statute of Acton Burnel. Recognizances might be taken before the mayor of London, or before some chief warden of a city or of another good town which the king should appoint, or before the mayor and chief warden or other sufficient men chosen or sworn thereto, when the mayor or chief warden could not attend, and before one of the clerks appointed by the king. If the debtor failed to make good his payment at the time promised in his recognizance, he was, if a layman, to be placed at once in prison. If he could not be found, the merchant might have writs to all the sheriffs in whose jurisdiction the debtor had lands; and as a last resource the merchant might have a writ directed to any sheriff that he pleased to take the debtor's body. The keeper of the prison became answerable for the debt if he refused to take custody of the debtor. Within a quarter of a year the chattels and lands were to be delivered to the creditor for sale in payment of his debt. If within the second quarter he did not make terms, all his goods and lands were to be delivered, the latter as if a gift of freehold, to the creditor, to hold until the debt was paid; the debtor being maintained on bread and water by the merchant. Precautions were taken against the debtor fraudulently making over his property. Lands given away by feoffment subsequently to the recognizance were to return to the feoffor. The death of the debtor did not bar the debt; for though the body of the heir could not be taken, his lands were answerable as much as during the lifetime of the debtor. The Jews were excluded from the benefits of the statute. (*Stat. of Realm*, i. 98.)

Reeves (*Hist. of the English Law*, ii. 162) observes that the above statute may be "considered as contributing to extend the power of alienating land." Any common creditor by judgment was empowered in the same session to take half the debtor's land in execution, "but a merchant who had resorted to this security might have the whole." He adds that "a recognizance acknowledged with

the formalities [here] described was in after times called a statute merchant;” and “a person who held lands in execution for payment of his debt, as hereby directed, was called tenant by statute merchant.” Barrington (*Obs. on the more Ancient Statutes*, p. 119) states that in 1536 an ordinance of Francis I. was issued, which very much resembled the statutes merchant, and shows, he says, “the more early attention paid to commerce in this country.”

BUTTER, one of the most important of the secondary articles of necessity, and, next to corn and cattle, perhaps the most valuable source of agricultural wealth. In many countries it is also of great commercial importance. All the butter that is produced in England is consumed at home, and a large quantity is imported besides from Ireland, Holland, and other countries. The consumption of butter in London is estimated by M'Culloch at 15,357 tons annually, of which 2000 tons are supplied to shipping. At 10d. per lb. for 34,400,000 lbs., the value consumed of this article amounts to 1,433,333*l.* The consumption per head in this estimate is assumed to be 5 oz. weekly, or 16 lbs. per annum. The value of the butter consumed in Paris in 1842 (*Annuaire* of the Board of Longitude) was 443,301*l.*, which, at 10d. per lb., would give a total consumption of above 10½ million lbs. The population of London is about double that of Paris, but the habits of consumption of any particular article may differ very widely in the two capitals; and in the case of London all that can be done is to arrive at an estimate which may approximate towards the truth. Of the total consumption of butter in the United Kingdom it would be useless to form a conjecture. Whenever the manufacturing population is prosperous, the consumption is always enormously increased. Not being an absolute necessity, it is natural that the consumption of such an article as butter should diminish when the resources of the population are less abundant than usual.

For the five years ending 1825 the quantity of butter imported annually from Ireland was 422,883 cwts., and

from foreign countries 159,332 cwts. In 1835 the imports from Ireland were 827,009 cwts., valued at 3,316,306*l.*; and in 1836 the import of foreign butter was 240,738 cwts., making a total of 1,067,747 cwts., or 53,387 tons. The imports from Ireland cannot be given for any year subsequent to 1835, but the imports from foreign countries, within the last few years, have been as follows:—

	Cwts.		Cwts.
1838	256,193	1841	277,428
1839	213,504	1842	175,197
1840	252,661	1843	151,996

About two-thirds of the foreign supply is usually imported from Holland.

In 1842 the imports were—from Denmark 5047 cwts.; Germany 45,346; Holland 112,778; Belgium 3996; British North America 3615; from the United States of North America 3769 cwts.; and small quantities arrived from France, the Channel Islands, and a few other places. In 1801 the duty on foreign butter was 2*s.* 9*d.* per cwt. and 3 per cent. *ad valorem*; and in 1813, after several successive intermediate additions, it was 5*s.* 1¾*d.* per cwt. The duty was raised to 20*s.* the cwt. in 1806, at which rate (with 5 per cent. added, making 21*s.* per cwt.) it still continues; but by the tariff of 1841 (5 & 6 Vict. c. 47) the duty on butter from British possessions was fixed at 5*s.* the cwt. (with 5 per cent. added, 5*s.* 3*d.*), and in the course of the following year the imports of colonial butter increased from 1971 cwts. to 4843 cwts. The duty on foreign butter exceeds 2*d.* per lb., and in 1841 produced 262,618*l.*, but in the following year, owing to a falling off in the imports, only 187,921*l.*

The butter exported from the United Kingdom is entirely the produce of Ireland, but the quantity is not separately distinguished from the exports of cheese, and cannot therefore be given. In 1843 the quantity of butter and cheese together exported was 71,130 cwts., valued at 253,340*l.* In 1842 the exports of the two commodities were 61,603 cwts., of which 23,858 were to the West Indies, 16,796 to Brazil, 8223 to Portugal, 4818 to the Australian Colonies, 1903 to the East Indies, 1465 to British North America, and



the remainder in small quantities to other parts.

In the 'Dictionary of the Farm,' by the late Rev. W. L. Rham, it is said that, by paying sufficient attention to the minutiae of the dairy, to the purity of the salt used, and especially to cleanliness, there is no reason why the rich pastures of England and Ireland should not produce as good butter as those of Holland, which now enjoys so deserved a pre-eminence for its butter. Mr. Rham gives the following information relative to the production of butter.—“We may state that, on an average, four gallons of milk produce sixteen ounces of butter; and to make the feeding of cows for the dairy a profitable employment in England, a good cow should produce 6 lbs. of butter per week in summer, and half that quantity in winter, or, allowing for the time of calving, about 200 lbs. a year” (Art. Butter, *Dict. of Farm*). Mr. McGregor, in his valuable 'Commercial Statistics' (i. p. 897) states that a superior dairy farm in South Holland, on which 50 cows are kept, is expected to produce annually 4000 lbs. of butter and 9000 lbs. of cheese. The quality of dairy produce in Ireland has been greatly improved within the last few years, and both in that country and in England, in some districts, greater attention to the minutiae to which Mr. Rham alludes, would add considerably to the value at present obtained from the land.

**BY-LAW.** By-laws are the private regulations of a society or corporation, agreed upon by the major part of the members, for more conveniently carrying into effect the object of the institution.

It is not every voluntary association to which the law of England gives the power of binding dissentient members by the rules made by the majority. Immemorial custom or prescription, or legal incorporation by the king, or some act of parliament, is necessary to confer the power of making by-laws; and even in those cases the superior courts of law can take cognizance of the by-law, and establish its legality or declare it to be void. In order to stand this test a by-law must be reasonable and agreeable to the law of England, and must not attempt to bind

strangers unconnected with the society, or to impose a pecuniary charge without a fair equivalent, or to create a monopoly, or to subject the freedom of trade to undue restraint. The general object of a by-law is rather to regulate existing rights than to introduce new ones or to extinguish or restrain the old.

The power of making by-laws is not confined to corporate bodies. It is in some instances lawfully exercised by a class of persons having no strict corporate character. Thus the tenants of a manor, the jury of a court-leet, the inhabitants of a town, village, or other district, frequently enjoy a limited power of this kind, either by special custom or common usage. But in general the power is exercised only by bodies regularly incorporated, and in such bodies the power is inherent without any specific provision for that purpose in the charter of their incorporation.

Our own term *by-law* is of Saxon origin, and is supposed by some writers to be formed by prefixing to the word *law* another word *by* or *bye*, which means *house* or *town*. Hence its primary import is a *town-law*, and in this form and with this meaning it is said to be found among the ancient Goths, the Swedes, the Danes, and other nations of Teutonic descent. (Cowel, voc. “Bilaws;” Spelman *On Feuds*, chap. ii. and the Glossaries under the head *—biago*, or *Bellago*.) But it seems a simpler explanation to suppose that by-law means a subsidiary or supplemental law. The modern German “*beilage*,” “*addition*,” or “*supplement*,” is in fact the same word as by-law; and the prefix “*by*” is common in the English language. In German the equivalent prefix *bei* is still more common.

The act for the regulation of municipal corporations, 5 & 6 Wm. IV. c. 76, gives to the town councils a power of making by-laws for the good rule and government of the boroughs, and for the suppression of various nuisances; and of enforcing the observance of them by fines limited to 5*l*. It directs however that no by-laws so framed shall come into operation until they have been submitted to the privy council for the king's approval—a precaution resembling in some degree the

provisions of the statute 19 Hen. VII. c. 7, by which the ordinances of trading guilds were made subject to the approbation of the chancellor, treasurer, chief justices, or judges of assize.

Under the Joint-Stock Companies Act, 7 & 8 Vict. c. 110, §§ 47, 48, provision is made for registering by-laws of such companies, as a condition of their being in force.

In Scotland there is very little common law on the subject of by-laws. The institutional writers say generally that every corporation, or other community, may make its own by-laws, provided they do not infringe on the law of the land; but there are hardly any precedents on the subject.

### C.

CABAL is often applied to a set of persons too insignificant in point of number to form a party who endeavour to effect their purposes by underhand means. The ministers of Charles II., Clifford, Ashley, Buckingham, Arlington, and Lauderdale, the initials of whose names happen to form the word cabal, were called the "Cabal Ministry." The word "cabal" appears to come from the French *cabale*, a term employed to express a number of persons acting in concert; and it is generally understood in a bad sense. (Richelet, *Diction.*) The remote origin of the word is probably the Rabbinical Cabala. We are not aware that it was used in our language before the time of Dryden.

CABINET. According to the constitution of England, the king is irresponsible, or, as the phrase is, he can do no wrong. The real responsibility rests with his ministers, who constitute what is termed the Cabinet. In their collective capacity they are called also the Administration, the Ministry, his Majesty's Ministers, or the Government. The king may dismiss his ministers if they do not possess his confidence, and he is dissatisfied with their policy. But this is a step not to be lightly hazarded, for if a ministry is supported by a majority of the House of Commons, the change would be useless, as the measures of a new mi-

nistry, of different principles, could not be carried in opposition to the opinions of a majority of the Commons, and the functions of government would be paralysed. A ministry may, therefore, retain their posts in spite of the well-known dislike of the king. He may dissolve Parliament and appeal to the country, and in this way may gain his object; but he may also be foiled in the attempt. If the ministers resign from inability to carry their measures, or are dismissed, the king sends for some leader of the party opposed to the late ministers and authorises him to form a new cabinet. The individual who thus receives the king's commands selects from those who are friendly to his policy the members of the new cabinet, and usually takes the post of Prime Minister himself. The Prime Minister is generally First Lord of the Treasury. The ministry is spoken of frequently as the ministry of the person who is its head. The other principal members of the Cabinet are the Lord Chancellor, the three Secretaries of State for Home, Colonial, and Foreign Affairs, and the Chancellor of the Exchequer. It should contain members of both Houses of Parliament. Other heads of public departments may also be called upon to take a seat in the Cabinet, as the First Lord of the Admiralty, the Postmaster-General, the President of the Board of Trade, the President of the Board of Control, the Secretary at War, the Paymaster-General, the Chief Secretary of Ireland, the Master of the Mint, all of whom have been Cabinet ministers at one time or another within the last twelve years. In the ministry of Earl Grey the Earl of Carlisle had a seat in the Cabinet without any office; but in this case it is usual to take the post of Lord Privy Seal or Lord President of the Council. One of the members of the present Cabinet, who fills the office of Lord Privy Seal, has no executive duties apart from his being a member of the Cabinet Council. It has not been usual for the Commander-in-Chief to be a member of the Cabinet; but this is the case at present (1845). Lord Mansfield was a Cabinet minister at the time he was Lord Chief-Justice of England; but this is also an exception.

The Privy Council was formerly the adviser of the king in all weighty matters of state. Affairs were debated and determined by vote in his presence, subject, however, to his pleasure. This body was, probably, too numerous for the dispatch of executive business. Some of the members of this body would be selected by the king for more private advice, as persons in whom he had greater confidence than the rest. This was an approximation to the Cabinet as now constituted. The period when this change became decidedly marked was in the reign of Charles I., though no formal constitutional change had yet been made. Speaking of this period Mr. Hallam says:—"The resolutions of the Crown, whether as to foreign alliances or the issuing of orders and proclamations at home, or any other overt act of government, were not finally taken without the deliberation and assent of that body (the Privy Council) whom the law recognized as its sworn and notorious counsellors." (*Const. Hist.*, ii., p. 537.) The next step was to render the ratification of measures of state by the Privy Council a matter of form. In the reign of Wm. III. Mr. Hallam states, that "the distinction of the Cabinet from the Privy Council and the exclusion of the latter from all business of state became fully established." The feeling in favour of the old constitutional practice was sufficiently strong to occasion the introduction of a clause in the Act of Settlement (4 Anne, c. 8) providing that on the accession of the House of Hanover, all regulations upon measures of public policy should be debated in the Privy Council, and be signed by them; but the clause was repealed in about two years afterwards by 6 Anne, c. 7. Mr. Hallam is of opinion that in devolving upon the Cabinet the functions formerly exercised by the Privy Council the power of the members of the executive government has been greatly increased, and their responsibility seriously diminished, even if it is not altogether illusory. But this is a matter on which there may be a difference of opinion. The change seems calculated to render an administration more consistent and efficient. The Privy Council is, even now, occa-

sionally assembled to deliberate on public affairs, but only those counsellors attend who are summoned. Proclamations and orders still issue from the Privy Council, and for the reason, it is said, that the Cabinet Council is not a body recognized by law.

In France, the executive government is divided into nine departments, the heads of which constitute the cabinet. These are the Interior; Justice and Public Worship; Public Instruction; Public Works; Commerce and Agriculture; Finances; Foreign Affairs; War; Marine and Colonies.

In the United States of North America, the following officers of the executive government form the Cabinet, and hold their offices at the will of the President: Secretary of State; Secretary of the Treasury; Secretary of War; Secretary of the Navy; the Postmaster-General.

CACHET, LETTRES DE, were letters proceeding from and signed by the kings of France, and countersigned by a secretary of state. They were called also "lettres closes," or "sealed letters," to distinguish them from the "lettres patentes," which were in the nature of public documents and sealed with the great seal. Lettres de cachet were rarely employed to deprive men of their personal liberty before the seventeenth century. It is said that they were devised by Père Joseph under the administration of Richelieu. They were at first made use of occasionally as a means of delaying the course of justice; but during the reign of Louis XIV. they were obtained by any person who had sufficient influence with the king or his ministers, and persons were thus imprisoned for life, or for a long period, on the most frivolous pretexts, for the gratification of private pique or revenge, and without any reason being assigned for such punishment. The terms of a lettre de cachet were as follows:—"M. le Marquis de Launay, je vous fais cette lettre pour vous dire de recevoir dans mon château de la Bastille le Sieur ———, et de l'y retenir jusqu'à nouvel ordre de ma part. Sur ce, je prie Dieu qu'il vous ait, M. le Marquis de Launay, en sa sainte garde." These letters, which gave power over personal

liberty, were openly sold in the reign of Louis XV. by the mistress of one of the ministers. "They were often given to the ministers, the mistresses, and favourites as *cartes blanches*, or only with the king's signature, so that the persons to whom they were given could insert such names and terms as they pleased." (Welcker.) The *lettres de cachet* were also granted by the king for the purpose of shielding his favourites or their friends from the consequences of their crimes; and thus were as pernicious in their operation as the protection afforded by the church to criminals in a former age. Their necessity was strongly maintained by the great families, as they were thus enabled to remove such of their connexions as had acted in a derogatory manner. During the contentions of the Mirabeau family, fifty-nine *lettres de cachet* were issued on the demand of one or other of its members. The independent members of the parliaments and of the magistracy were proscribed and punished by means of these warrants. This monstrous evil was swept away at the Revolution, after Louis XVI. had in vain endeavoured to remedy it.

(Mirabeau, *Des Lettres de Cachet*, &c., 1782; *Translation*, published at London, in two volumes, in 1787; Rotteck and Welcker, *Staats-Lexicon*, art. "Cachet, *Lettres de*," by Welcker.)

CANON (*κανών*), a rule. The several senses in which this word is used are all derivatives from its first original sense: and this sense it appears to have acquired, as itself a derivative from *canna*, (we use the Latin form, though in fact both *canna* and *canon* are Greek terms transplanted into the Latin language,) which signifies a *reed* or *cane*; such a plant as produced straight, round, smooth and even shoots, adapted to the purpose of a *rule*; or as we say, a *ruler*, used in drawing straight lines. The word *cannon* is the same with *canon*, and is applied to the instrument of war so called on account of its resemblance to a rule. The word *canon* is used in mathematics and in music: and also to express certain grammatical rules formed by the critics. But it is more particularly appropriated in the sense of a *rule* in respect of things

ecclesiastical. The word was so used by Saint Paul (Gal. vi. 16). 'And as many as walk according to this *rule* (*canon*), peace be on them and mercy, and upon the Israel of God.'

The *rule* here spoken of was the Christian rule, the rule or law of the Christian church: and as these rules became explained or amplified in subsequent times by popes, bishops, councils, whether general or particular, these new rules or explications of the fundamental rules of the Christian church were designated by the term *canones* or *canons*. The collected body of these canons forms what is called The Canon Law, which must be distinguished from the civil law. The civil law is the Roman law as now received in various countries of Europe. [ROMAN LAW.] A doctor of laws in Great Britain is a doctor of both civil and canon law.

*Canon* is also used for the *rule* of persons who are devoted to a life strictly religious: persons who live according to (religious) rule, such as praying at certain hours, and for a certain length of time, keeping themselves from marriage, eating particular kinds of meat, periodical fastings, and the like. It is applied to the *book* in which the rule was written, and which was read over to such professed persons from time to time: and since in such a book it was not unusual to enter also the names of persons who had been benefactors to the community, which names were recited from time to time with honour, and they were held and reputed to be holy persons or saints (*sancti*): the entry of such names formed what is meant by *canonization*, though in later times, when it was found that saints multiplied too fast, when every small religious community added any benefactor to their list, the term became confined to such persons as had their names enrolled in the great volume of which the pope, the head of the church, was the sole guardian. It was also applied to *persons* who lived under a rule: as the Augustinian canons, persons who adopted the rule of Saint Augustine. And here the distinction is to be observed of *regular* and *secular canons*. The regular canons were persons who were confined to their own

monasteries, where they practised their rule; the secular canons were persons living indeed a religious life, or one according to some prescribed Christian form and order, but who nevertheless mixed more or less with the world, and discharged the various offices of Christianity for the edification of the laity. This was the species of canons that are found in the cathedral churches, or in other churches called conventual, as at Southwell in Nottinghamshire, which were all churches of very antient foundation, the centres of Christianity throughout an extensive district. There they lived a kind of monastic life under the presidency generally of a bishop; but went out occasionally to introduce Christian truth into districts into which it had not before penetrated, or to instruct the persons lately received into the church, and to perform for them the various ordinances of Christianity. As parish churches arose, the necessity for such visits from the canons in the cathedral churches was diminished. But the institution remained: it was spared at the Reformation, and continues to the present day. These canons are sometimes called prebendaries, a name derived from their being endowed with land or tithe, as many of them are to a greater or less extent, which endowment is called a prebend. [PREBEND.] The canons have stalls in the cathedral churches, which are generally called prebendal stalls. They form the chapter in the expression the dean and chapter, and are still nominally what they actually once were, the council of the bishop for the administration of the affairs of his diocese.

The act 3 & 4 Vict. c. 113, enacted that henceforth all the members of chapter, except the dean, in every collegiate church in England, and in the cathedral churches of St. David and Llandaff, should be styled canons. By this act the term canon is to be applied to every residentiary member of chapter except the dean, heretofore styled either prebendary, canon, canon-residentiary, or residentiary; and the term "minor canon" includes every vicar, vicar-choral, priest-vicar, and senior vicar, being a member of the choir in any cathedral or collegiate church. A canonry,

except it is attached to any university office, cannot be held by a person who has not been six years in priest's orders. The term of residence fixed by the act for each canon is three months in the year at the least. The act suspends a great number of canonries, and limits the number to be held in future. The number suspended in the chapters of Canterbury, Durham, Worcester, and Westminster, is six each; Windsor, eight; Winchester, seven; Exeter, three; Hereford, one; and two each in the other cathedral chapters. The profits of the suspended canonries are vested in the Ecclesiastical Commissioners. The suspension of a canonry may be removed under special circumstances, and in the manner provided by the act. The future number of canonries is fixed at six each for the chapters of Canterbury, Durham, Ely, and Westminster; five each for Winchester and Exeter; and four each for the other cathedral or collegiate churches of England; and two each for St. David's and Llandaff. The act increased the canonries of the chapters of Lincoln, and St. Paul's, London, to four. The number of minor canonries is not to exceed four, nor be less than two, for each cathedral or collegiate church, and the salaries are to be not less than 150*l*. Minor canons are not to hold any benefice beyond six miles from their cathedral church. The canonries are in the gift of the archbishops and bishops respectively, but the three canons of St. Paul's, London, are appointed by the crown. The minor canons are appointed by the respective chapters. In some cases it is provided that archdeacons shall be annexed to canonries. The act also provided for the annexing of two canonries of Christchurch, Oxford, to two new professorships in the university; for annexing two of the canonries of Ely to the regius professorships of Hebrew and Greek at Cambridge; for annexing two canonries of Westminster to the rectories of St. Margaret's and St. John's, in the city of Westminster; and for founding honorary canonries in every cathedral church in England, in which there were not already founded any non-residentiary prebends, dignities, or offices. The honorary canons are entitled to stalls,

and their number in each cathedral church is limited to twenty-four, who are appointed by the archbishops and bishops respectively. This honorary preferment may be held with two benefices. Doubts having been entertained as to the cathedral churches in which honorary canons were to be founded, it was enacted in 4 & 5 Vict. c. 39, that such cathedral churches were to be those of Canterbury, Bristol, Carlisle, Chester, Durham, Ely, Gloucester, Norwich, Oxford, Peterborough, Ripon, Rochester, Winchester, and Worcester; and the collegiate church of Manchester, so soon as the same should become a cathedral church. The honorary canons have no emolument, nor any place in the chapter; but the patronage of chapters is restricted, and the canons, minor canons, and honorary canons are included amongst the persons to whom vacant benefices in the gift of the chapter must be presented.

From *canon* is formed *canonical*, which occurs in many ecclesiastical terms, as *canonical hours*, *canonical sins*, *canonical punishment*, *canonical letters*, *canonical obedience*, and *canonical scriptures*. The canonical scriptures are the usually received books of the Old and New Testament.

**CANON LAW**, a collection of ecclesiastical constitutions for the regulation of the Church of Rome, consisting for the most part of ordinances of general and provincial councils, decrees promulgated by the popes with the sanction of the cardinals, and decretal epistles and bulls of the popes. The origin of the canon law is said to be coeval with the establishment of Christianity under the apostles and their immediate successors, who are supposed to have framed certain rules or canons for the government of the church. These are called the apostolical canons; and though the fact of their being the work of the apostles does not admit of proof, there is no doubt that they belong to a very early period of ecclesiastical history.

These rules were subsequently enlarged and explained by general councils of the church. The canons of the four councils of Nice, Constantinople, Ephesus, and Chalcedon (which were held at different times in the fourth and fifth centuries),

received the sanction of the Emperor Justinian, A.D. 545. (Novel. 131, cap. 1.) The chapter referred to, after confirming the decrees of the four councils, adds, "we receive the doctrines of the aforesaid holy synods (i. e. councils) as the divine Scriptures, and their canons we observe as laws." Collections of these canons were made at an early period. The most remarkable of these collections, and that which seems to have been most generally received, is the *Codex Canonum*, which was compiled by Dionysius Exiguus, a Roman monk, A.D. 520. This body of constitutions, together with the capitularies of Charlemagne and the decrees of the popes from Siricius (A.D. 398) to Anastasius IV. (A.D. 1154), formed the principal part of the canon law until the twelfth century. The power of the popes was then rapidly increasing, and a uniform system of law was required for the regulation of ecclesiastical matters.

This necessity excited the activity of the ecclesiastical lawyers. After some minor compilations had appeared, a collection of the decrees made by the popes and cardinals was begun by Ivo, Bishop of Chartres, A.D. 1114, and perfected by Gratian, a Benedictine monk, in the year 1150, who first reduced these ecclesiastical constitutions into method. The work of Gratian is in three books, arranged and digested into titles and chapters in imitation of the Pandects of Justinian, and is entitled '*Concordia discordantium Canonum*,' but is commonly known by the name '*of Decretum Gratiani*.' It comprises a series of canons and other ecclesiastical constitutions from the time of Constantine the Great, at the beginning of the fourth, to that of Pope Alexander III., at the end of the twelfth century. The decretals, which were rescripts or letters of the popes in answer to questions of ecclesiastical matters submitted to them by private persons, and which had obtained the authority of laws, were first published A.D. 1234, in five books, by Raimond de Renafort, chaplain to Pope Gregory IX. This work, which consists almost entirely of rescripts issued by the later popes, especially Alexander III., Innocent III., Honorius III., and Gre-

gory IX. himself, forms the most essential part of the canon law, the Decretum of Gratian being comparatively obsolete. These decretals comprise all the subjects which were in that age within the cognizance of the ecclesiastical courts, as the lives and conversation of the clergy, matrimony and divorces, inquisition of criminal matters, purgation, penance, excommunication, and the like. To these five books of Gregory, Boniface VIII. added a sixth (A.D. 1298), called 'Sextus Decretalium,' or the 'Sext,' which is itself divided into five books, and forms a supplement to the first five books, of which it follows the arrangement. The Sext consists of decisions promulgated after the pontificate of Gregory IX. The Clementines, or Constitutions of Clement V., were published by him in the council of Vienna (A.D. 1308), and were followed (A.D. 1317) by those of his successor, John XXII., called Extravagantes Johannis. To these have since been added some decrees of later popes, arranged in five books after the manner of the Sext, and called Extravagantes Communes. All these together, viz. Gratian's Decree, the Decretals of Gregory IX., the Sext, the Clementines, and the Extravagants of John XXII. and his successors, from what is called the Corpus Juris Canonici, or body of canon law. Besides these, the institutes of the canon law were compiled by John Launcelot, by order of Paul IV., in the sixteenth century; but it appears from the author's preface that they were never publicly acknowledged by the popes. In 1661 there was published a collection of the decretals of different councils, which is in some editions of the Corpus Juris Canonici, but this likewise has never received the sanction of the Holy See.

The introduction of this new code gave rise to a new class of practitioners, commentators, and judges, almost as numerous as those who had devoted themselves to the study and exposition of the civil law, from which they looked for aid in all cases of difficulty and doubt. In fact, the two systems of law, though to a certain extent rivals, became so far entwined, that the tribunals of the one were accustomed, wherever their own law did not

provide for a case, to adopt the rules that prevailed in those of the other.

The main object of the canon law was to establish the supremacy of ecclesiastical authority over the temporal power, or at least to assert the total independence of the clergy upon the laity. The positions, that the laws of laymen cannot bind the church to its prejudice, that the constitutions of princes in relation to ecclesiastical matters are of no authority, that subjects owe no allegiance to an excommunicated lord, are among the most prominent doctrines of Gratian's Decretum and the decretals. The encroachments of the church upon the temporal power were never encouraged in England. The doctrines of passive obedience and non-resistance, inculcated by the decretals, were not likely to be relished by the rude barons who composed the parliaments of Henry III. and Edward I. Accordingly we find that this system of law never obtained a firm footing in this country: and our most eminent lawyers have always shown great unwillingness to defer to its authority. It is observed by Blackstone (*Com. i. p. 80*) that "all the strength that either the papal or imperial laws have obtained in this realm is only because they have been admitted and received by immemorial usage and custom in some particular cases and some particular courts; and then they form a branch of the *leges non scriptæ*, or customary laws; or else, because they are in some other cases introduced by consent of parliament, and then they owe their validity to the *leges scriptæ*, or statute law." There was indeed a kind of national canon law, composed of *legatine* and *provincial* constitutions, adapted to the necessities of the English Church. Of these the former were ecclesiastical laws enacted in national synods held under the cardinals Otho and Othobon, legates from Pope Gregory IX. and Clement IV. in the reign of Henry III. The provincial constitutions were the decrees of provincial synods held under divers archbishops of Canterbury, from Stephen Langton, in the reign of Henry III., to Henry Chichele, in the reign of Henry V., and adopted also by the province of York in the reign of Henry VI.

(Blackstone, *Com. i. p. 83*; Burn's *Eccl. Law*, Preface.)

With respect to these canons it was, at the time of the Reformation, provided by stat. 25 Henry VIII. c. 19 (afterwards repealed by 1 Philip and Mary, c. 8, but revived by 1 Eliz. c. 1), that they should be reviewed by the king and certain commissioners to be appointed under the act, but that, till such review should be made, all canons, constitutions, ordinances, and synodals provincial, being then already made and not repugnant to the law of the land or the king's prerogative, should still be used and executed. No such review took place in Henry's time; but the project for the reformation of the canons was revived under Edward VI., and a new code of ecclesiastical law was drawn up under a commission appointed by the crown under the stat. 3 & 4 Edward VI. c. 11, and received the name of *Reformatio Legum Ecclesiasticarum*. The confirmation of this was prevented by the death of the king, and though the project for a review of the old canons was renewed in the reign of Elizabeth, it was soon dropped, and has not been revived.

The result is, that so much of the English canons made previously to the stat. of Henry VIII. as are not repugnant to the common or statute law, is still in force in this country. It has, however, been decided by the Court of King's Bench that the canons of the convocation of Canterbury, in 1603 (which, though confirmed by King James I., never received the sanction of parliament), do not (except so far as they are declaratory of the ancient canon law) bind the laity of these realms. (*Middleton v. Croft*; *Strange's Reports*, 1056.) It was, however, admitted by Lord Hardwicke, in delivering judgment in this case, that the clergy are bound by all canons which are confirmed by the king. [CONSTITUTIONS, ECCLESIASTICAL.]

There are two kinds of courts in England, in which the canon law is under certain restrictions used. 1. The courts of the archbishops and bishops and their officers, usually called in our law Courts Christian, *Curia Christianitatis*, or ecclesiastical courts. 2. The courts of the two universities. In the first of these, the reception of the canon law is grounded

entirely upon custom; but the custom in the case of the universities derives additional support from the acts of parliament which confirm the charters of those bodies. They are all subject to the control of the courts of common law, which assume the exclusive right of expounding all statutes relating to the ecclesiastical courts, and will prohibit them from going beyond the limits of their respective jurisdictions; and from all of them an appeal lies to the king in the last resort.

Before the Reformation, degrees were as frequent in the canon law as in the civil law. Many persons became graduates in both, or *juris utriusque doctores*; and this degree is still common in foreign universities. But Henry VIII., in the twenty-seventh year of his reign, issued a mandate to the university of Cambridge, to the effect that no lectures on canon law should be read, and no degrees whatever in that faculty conferred in the university for the future. (*Stat. Acad. Cantab.*, p. 137.) It is probable that Oxford received a similar prohibition about the same time, as degrees in canon law have ever since been discontinued in England.

The decree of Gratian and the Decretals are usually cited not according to book and title, but by reference to the first word of the canon, which renders it necessary for the reader to consult the alphabetical list of the canons, in order to find out the book, title, and chapter, under which the canon he wishes to consult is to be found.

CAPACITY, LEGAL. [AGE; INSANITY.]

CAPITAL is a term used in commerce to express the stock of the merchant, manufacturer, or trader, used in carrying on his business, in the purchase or manufacture of commodities, and in the payment of the wages of labour; and is understood not only of money, but of buildings, machinery, and all other material objects which facilitate his operations in trade. The term itself and the practical qualities and uses of capital are sufficiently understood in this its commercial sense; but it is the object of the present article to treat of capital in a more extended form, as within the province of political economy, and embracing



not only the capital of particular individuals, but the entire capital of a country. In this latter sense, capital may be defined as the products of industry possessed by the community, and still available for use only, or for further production.

To consider capital in all its relations to the material interests of man, to the increase of population, the employment and wages of labourers, to profits and rent, it would be necessary to travel over the entire range of political economy; but this article will be confined to the following points.—I. The origin and growth of capital. II. Its application and uses.

I. Capital is first called into existence by the natural foresight of man, who even in a savage state discerns the advantage of not immediately consuming the whole produce of his exertions in present gratification, and stores up a part for his future subsistence. The greater proportion of mankind possess this quality, and those who do not possess it are admonished of its value by privation. In civilized life there are many concurrent inducements to accumulate savings; of which the most general are—the anxiety of men to provide for their families and for themselves in old age; social emulation, or their desire to substitute the manual labour of others for their own, and of advancing themselves from one grade to another in society; and a love of ease and luxury, which can only be purchased by present sacrifices.

A desire to accumulate some portion of the produce of industry being thus natural to mankind and nearly universal, the growth of capital may be expected wherever the means of accumulation exist; or, in other words, wherever men are not obliged to consume the whole products of their labour in their own subsistence. From the moment at which a man produces more than he consumes, he is creating a capital; and the accumulated surplus of production over the consumption of the whole community is the capital of a country.

Thus far the origin and growth of capital are perfectly intelligible; but in order to understand completely the progress of accumulation, it will be necessary to advert to certain matters which inter-

fere with its apparent simplicity. As yet no distinction has been noticed, either in the original definition of capital or in the succeeding explanation of its causes, between those parts of the products of labour which are reserved for the reproduction of other commodities, and those parts which are intended solely for use or consumption. These two classes of products have been divided by Adam Smith and others into capital and revenue; by which division all products are excluded from the definition of capital unless they be designed for aiding in further production. The impropriety of this distinction, however, has been pointed out by Mr. M'Culloch ('Principles of Political Economy,' p. 97), and it does not appear that any such division of the stock of a country is founded on a proper distinction. How can its future application be predicated? The fund exists, and so long as it is not sent abroad or consumed it must be regarded as capital. The whole of it may be made available for further production, or the whole may be consumed in present enjoyment; but no part is separable from the rest by an arbitrary classification. A man may choose, hereafter, to spend all his savings in drinking spirits and frequenting the theatres; or he may carefully lay them aside for the employment of a labourer in some profitable work: but in either case the stock has the same capacity for production while in the possession of the owner.

These different modes of expending capital produce very distinct results, both as regards the interests of the individual and of society, which will be examined under the second division of this article, where the application and uses of capital are considered; but here it must be observed that the accumulation of capital proceeds slowly or rapidly in proportion as one or other of these modes of expenditure is most prevalent. If men habitually consumed or wasted all the results of their industry, it is obvious that the effect of such conduct would be precisely the same to themselves, in preventing accumulation, as if they were unable to earn anything more than was absolutely necessary for their support. It is true that

they would enjoy more of the luxuries of life, and, as will presently be seen, their expenditure would conduce, indirectly, to the accumulation of capital by others; but still their labour would only suffice for their own support from year to year, and no part of the produce of last year's labour would be available, in the present year, either for their support or for any other purposes. But when a man, instead of spending the results of a whole year's labour within the year, subsists upon one-half of them, the other half remains to him in the succeeding year, and in the course of two years such economy will have placed him a whole year in advance.

As it is evident from these illustrations, that capital must increase in the ratio in which the products of labour exceed the expense of subsistence, it would seem to follow as a necessary consequence that, when a certain amount of capital has already been produced, the higher the rate of profit which may be obtainable from such capital, the greater will be the means of further accumulation. [PROFITS.] It is not necessary, indeed, that larger savings should in fact be made, as that must depend upon the conduct of those who enjoy the profits. The larger their profits may be, the greater may be their personal expenditure; and a taste for luxury and display may be engendered, the gratification of which may be more tempting than the desire of further accumulation. Nor can it be denied that, in practice, an unusually high rate of profits very often encourages an extravagant expenditure. It is, perhaps, more natural that it should produce self-indulgence rather than stimulate economy. The accumulation of savings is an act of self-denial very necessary and profitable, it is true, but not very pleasing when the sacrifice is about to be made; and its necessity is less obvious when large profits are rapidly secured, than in less prosperous circumstances. When the profits arising from a man's capital, if expended, are already sufficient to satisfy his desires, we cannot wonder if he thinks less of the morrow.

Yet, whether savings proportionate to the means of saving be made or not, it

is undeniable that a high rate of profit offers the best opportunity for augmenting capital. If three *per cent.* profit upon a man's stock will enable him to subsist as he has been accustomed, and to lay aside one per cent. annually as capital, the rise of profit to six *per cent.* would at once give him the power of adding four per cent., instead of one, to his capital, so long as he made no change in his style of living: and thus the doubling of the rate of profit would add to the means of accumulation in the proportion of four to one.

Making all due allowances, therefore, for greater profusion of expenditure, the proposition that large profits are favourable to accumulation may be held as demonstrable; for, reverse the circumstances, and suppose that profits were so small as to disable those who were willing to save from retaining any surplus whatever, the result must be precisely the same to themselves as if they had voluntarily consumed the whole excess of their production; while their poverty would not conduce indirectly to accumulation by others, as their expenditure of a surplus might have done.

But, apart from abstract reasoning, does the experience of different countries bear out the same conclusion? In England, for example, was capital accumulated more rapidly while profits were high, than within the last few years? These questions do not always receive the same answer. Mr. McCulloch compares the progress of the United States of America, in wealth and population, with that of England and Holland, and ascribes the comparative rapidity of their advancement to the fact, that the rate of profit is generally twice as high in America as in either of the other countries. (*Principles of Pol. Ec.*, p. 107.) He adds (p. 110), that if the rates of profit have become comparatively low, the condition of a nation, "how prosperous soever in appearance, is bad and unsound at bottom." Professor Jones, on the other hand, denies this inference, and takes a more encouraging view of the state and prospects of our own country. He says, "That fall of the rate of profits, which is so common a phenomenon as to be almost a constant

attendant on increasing population and wealth, is, it will be seen, so far from indicating greater feebleness in any branch of industry, that it is usually accompanied by an increasing productive power in all, and by an ability to accumulate fresh resources more abundantly and more rapidly. So far, therefore, is this circumstance from being, as it has hastily been feared and described to be, an unerring symptom of national decay, that it will be shown to be one of the most constant accompaniments and indications of economical prosperity and vigour." (*Distribution of Wealth*, Preface, p. xxxii.)

These opinions, apparently conflicting, upon matters of fact, may prove, upon examination, not to be wholly irreconcilable. It is doubtful whether the United States of America be a good example for the purpose of this inquiry, as there have been many concurrent circumstances in operation, in that country, all tending to the same result; and of which high profits may be regarded as the effect rather than the cause. It will be safer, therefore, to confine the examination of the effects of high profits upon accumulation to our own country at different times.

First, then, it will be admitted on all hands that individual fortunes have been more rapidly accumulated in England at those times in which the profits in particular departments of industry were the highest. This admission is no more, in other words, than the truism, that when a trade is prosperous money is made by it. The next question is, whether a high rate of profit in all departments of industry has the same effect in augmenting the sum total of national capital. Political reasoners are too apt to assume a universal analogy between individuals and nations, which is often deceptive, and leads to inaccurate conclusions. In the present instance, if this analogy were allowed, it would be decisive of the whole question, and would exclude all observation of facts. The fact, as stated by Professor Jones, is undeniable, that a fall in the rate of profits is the ordinary accompaniment of increasing population and wealth. There is more capital in England and in Holland, in proportion to the population, than in any country in the

world, and in those countries the rate of profit is the lowest. The resources of England have been increasing in an extraordinary manner during the last forty years, as evinced by the productiveness of the property-tax and other imposts, compared with former periods, and as proved by all statistics (Porter's *Progress of the Nation*, sect. vi.); and, at the same time, the more evident the wealth of the country has become, the lower has fallen the general rate of profits.

The examination of the causes of profit is reserved for a separate article [PROFITS]; but here it may be stated that a fall in the rate of profits is the inevitable result of enormous accumulations of capital. Capitalists are forced into competition with each other, and are ultimately obliged to content themselves with lower profits. But, in the meantime, does the aggregate accumulation of national wealth diminish? This inference is contradicted by all the statistics which illustrate the progress and present condition of Great Britain. [CENSUS of 1841.] All evidence shows that British capital is positively overflowing, and seeking employment in every enterprise at home or abroad. It is true that no statistics can decide, with arithmetical precision, the comparative rate of increase in the accumulation of capital at different times; but so far as outward indications of wealth may be relied on, there are very few who are prepared to deny that accumulation is now advancing, in the aggregate, at least as rapidly as ever, in proportion to the population of the country.

This fact, it is submitted, is nevertheless consistent with the general proposition, that high profits are favourable to accumulation. In calculating the aggregate savings of a people already rich and populous, it must be borne in mind, first, that the existing generation has inherited the accumulations of many preceding generations; and, secondly, that a large number of persons continually saving a small portion of their individual gains, may produce a greater aggregate accumulation than the larger proportionate savings of a less number of persons.

With reference to the first point, it need only be observed, that if the inher-

rited capital be not squandered or wasted, its annual interest alone affords the means of enormous accumulation; while the rent of land, the profits of trade, and the wages of labour, are continually supplying new funds for further production and accumulation. The second point may be made clearer by an illustration. Let us suppose one hundred men, each saving 100*l.* annually out of their profits. Their aggregate accumulations would amount to 10,000*l.* But suppose one thousand men, with equal capitals, but unable, on account of a lower rate of profit, to save more than 50*l.* a year; their aggregate accumulations would amount to 50,000*l.* In both cases they would have maintained themselves and their families out of their profits, and have paid the wages of all the labour required in their business; after which their savings remain available for increased production, and for the employment of a larger quantity of labour. This example falls far short of the circumstances of Great Britain, for the number of small capitalists is even more extraordinary than the enormous capitals possessed by a comparatively small number of wealthy men; and their annual additions to the national capital are of incalculable amount.

The conclusions to which we are led by these inquiries, are—that a high rate of profit is favourable to accumulation; that rich and populous countries are denied this advantage; that if they enjoyed it, their capital would continue to increase more rapidly than it does, in fact, increase; but that, under ordinarily favourable circumstances, the masses of inherited capital and the aggregate savings of vast numbers of capitalists still facilitate accumulation in a greater ratio than the increase of population, which a high state of civilization has a tendency to check. [POPULATION.]

II. The consideration of the application and uses of capital will be disembarassed of much complexity by explaining, at the outset, the distinction raised by political economists between what is called productive and unproductive labour and expenditure. The end of all production is use or consumption: some products are immediately destroyed by the use of them,

as food or coals; others are consumed more slowly, but are ultimately destroyed by use, as clothes or furniture: but whatever is the durability of the thing produced, its sole use is the enjoyment of man. A man is rich or poor according to his power of obtaining the various sources of enjoyment which the skill and industry of others produce; and the aggregate of such permanent sources of enjoyment constitutes the wealth of nations. Whatever labour or expenditure, therefore, may be devoted to the increase or continuance of those sources of enjoyment, must be deemed productive: and labour and expenditure, which have no such tendency, must be viewed as unproductive.

The most scientific classification of productive and unproductive descriptions of labour and expenditure which we have met with is that of Mr. Mill. According to his definition the following are always productive:—When their “direct object or effect is the creation of some material product useful or agreeable to mankind,” or “to endow human or other animated beings with faculties or qualities useful or agreeable to mankind, and possessing exchangeable value:” or “which, without having for their direct object the creation of any useful material product, or bodily or mental faculty or quality, yet tend indirectly to promote one or other of those ends, and are exerted or incurred solely for that purpose.” Labour and expenditure are said to be unproductive when they are “directly or exclusively for the purpose of enjoyment, and not calling into existence anything, whether substance or quality, but such as begins and perishes in the enjoyment;” or when they are exerted or incurred “uselessly or in pure waste, and yielding neither direct enjoyment nor permanent sources of enjoyment.” (*Essays on Unsettled Questions of Political Economy*, Essay III.)

Examples of these several classes would transgress our limits, but a study of the above definitions may serve to correct an erroneous impression, that no expenditure is productive unless it be incurred directly in aid of further production. The most common form in which this

error appears, is in a comparison of the ordinary expenditure of a gentleman living upon his income, with that of a person employing workmen in a productive trade. It is hastily assumed that the expenditure of the former is unproductive, but it is, in fact, of a mixed character. His servants, for instance, perform many labours of a productive character. His cook prepares food for his table, and thus adds the last process of a manufacture. In point of productiveness it is impossible to distinguish this necessary labour from that of a butcher or baker. His gardener is an agriculturist and directly productive. The upholsterer who makes his furniture is productive: and in what manner is the labour of his housemaid less productive, who keeps it fit for use? In the same manner, why is the labour of his butler less productive than that of the silversmith; or of his coachman than that of the coach-builder and the breeder of horses? All are engaged, alike, in increasing or continuing permanent sources of enjoyment. But the most important economical use of domestic servants is the division of labour which it creates. While they are engaged upon household services their employer is free to follow his own more important duties—the management of his estates, the investment of his capital, or the labours of his profession. It is not, therefore, in the employment of servants that expenditure is unproductively incurred, but in the employment of excessive numbers; for then they are used directly and exclusively for the purpose of an enjoyment “which begins and perishes in the enjoyment.”

We will now briefly examine the nature of productive and unproductive consumption of perishable articles, and the effects of consumption, generally, upon production. Those who produce anything have one object only in devoting their labour to it—that of ultimately consuming the thing itself, or its equivalent, in the form of some other product of labour. If the exchange be made in goods, each consumer is obviously also a producer, and adds to the common stock of enjoyment as much as he withdraws from it. But money is the representative of the

products of labour, and if given in exchange for them, the character of the transaction would appear to be the same as the direct interchange of the products themselves. In the case of productive labourers, it would be admitted to be precisely the same; but a distinction is taken when the labour of the consumer is itself unproductive. It is true that he offers the results of past labour, but his immediate end in consuming is enjoyment. He parts with his money, which is an equivalent to the seller, but he produces no new source of enjoyment for society. But the consumption of a productive labourer may also be unproductive. ‘Such part of his consumption as is necessary to keep him in health, to render him perfectly fit, in mind and body, for his employment, and to rear his children suitably, is all clearly productive. If any residue remain, and he spend it upon immediate enjoyment—such as spirits, for example, which vanish with the enjoyment—that portion of his consumption is unproductive.

It must not be imagined, however, that the only result of money spent upon unproductive labour, or of unproductive consumption, is necessarily waste. The results of a man's labour may be unproductive to society, but a great part of his gains may be productively expended: and again, the maker and seller of commodities unproductively consumed are productive, and their profits may be productively applied. The distiller and the publican are productive labourers, but the consumption of spirits is itself unproductive.

We are now enabled to confine our attention to the uses of capital, as applied to its most important end, the employment and aid of productive industry. Its first and most important use is the division of employments, which, though necessary for any advance in arts, is impracticable without some previous accumulation of capital. Until there is a fund for employing labour, every man's business is the seeking of his own daily food; but as soon as the capital of another secures that for him, his labour is available for the general good. The more capital is accumulated, the more extended are the facilities for indefinite distribution

of employments, according to the wants of the community.

Capital may be applied either directly in the employment of labour, or directly in aid of labour: it may be spent in the food and clothes of labourers, or in tools and other auxiliary machinery, to assist their labour and increase its productiveness. The former is usually termed circulating capital, and the latter fixed capital. Both are equally essential to the progress of the arts and national wealth, and are used in combination; but the effects produced by each are not always the same. If a farmer employs three labourers, and his capital is afterwards doubled, it is a very important question whether he expend his increased stock in the payment of three additional labourers, or in providing auxiliary machinery to increase the power of the three labourers already employed. In the latter case we may be assured that his machinery will do the work of more than three men; for otherwise no ingenuity would have been applied to its contrivance. It is truly said by Professor Jones, that "when, instead of using their capital to support fresh labourers in any art, (a people) prefer expending an equal amount of capital in some shape in which it is assistant to the labour already employed in that art, we may conclude with perfect certainty, that the efficiency of human industry has increased relatively to the amount of capital employed." (*Distribution of Wealth*, p. 222.) The same able writer has pointed out another difference in the results of auxiliary capital, viz. "that when a given quantity of additional capital is applied, in the results of past labour, to assist the labourers actually employed, a less annual return will suffice to make the employment of such capital profitable, and therefore permanently practicable, than if the same quantity of fresh capital were expended in the support of additional labourers." (*Ibid.* p. 224.) This circumstance arises from the greater durability of the fixed capital, which may not require renewal for several years, while the direct expenditure on labour must be renewed annually. Thus 100*l.* spent in labour to cause a profit of 10 per cent. must pro-

duce results amounting in value to 110*l.*, but the same sum expended upon any machinery calculated to last for five years would be equally well repaid by a return of 30*l.* a year; being 10*l.* for profit upon the outlay, and 20*l.* for the annual wear and tear of the capital.

Not only does capital facilitate divisions of employment, and increase the productiveness of industry, by which the enjoyments of man are multiplied, but it actually produces many sources of power and enjoyment, which without it could have no existence. It is the foundation of all social progress and civilization, for without it man is but a savage. It must precede his mental culture, for until it exists his noble endowments are idle or misemployed. Without it, his mind is a slave to the wants of his body: with it, the strength of others becomes subservient to his will, and while he directs it to increase the physical enjoyments of his race, his intellect ranges beyond the common necessities of man, and aspires to wisdom—to government and laws—to arts and sciences. In all the nations of the world riches have preceded and introduced intellectual superiority. Connected with the progress of the human intellect, the printing press is an apt example of the creations, so to speak, effected by capital. No dexterity of fingers, no ingenuity of contrivance, unaided by the results of former labour, could multiply copies of books. Without abundance of types and frames and other appliances of the art, secured by capital, the bare invention of printing would be useless; and its wonderful efficacy, in the present age, may be ascribed as much to the resources of capital as to human ingenuity. In numberless other processes of art capital enables work to be executed which could not otherwise be performed at all, or enables it to be performed better and in less time. In all ways it multiplies indefinitely the varied sources of enjoyment that are offered to civilized man; but never more conspicuously than when it stimulates and encourages invention. Look at the railways of Great Britain. What created them? The abounding capital of the people, which, overflowing

the ordinary channels of investments, found a new channel for itself. In ten years the land was traversed by iron roads, and millions of people were borne along by steam with the speed of the wind.

This rapid sketch of the uses of capital will not be complete without its moral. The paramount value of capital to the prosperity of a nation should never be overlooked by a government. Unwise laws, restrictions upon commerce, improvident taxation, which are unfavourable to its growth, should be dreaded as poison to the sources of national wealth and happiness. No class is the better for its decay or retarded growth: all derive benefit from its increase. And above all, when population is rapidly increasing, let a government beware how it interferes with the natural growth of capital, lest the fund for the employment of labour should fail, and the numbers of the people, instead of being an instrument of national power, should become the unhappy cause of its decay. The material happiness of a people is greatest when the national wealth is increasing more rapidly than the population; when the demand for labour is ever in advance of the supply. It is then also that a people, being contented, are most easily governed; and that taxes are most productive and raised with least difficulty. But while the natural growth of capital should not be interfered with by restrictions, the opposite error of forcing it into particular channels should equally be avoided. Industry requires from government nothing but freedom for its exercise; and capital will then find its own way into the most productive employments; for its genius is more fertile than that of statesmen, and its energy is greatest when left to itself. The best means of aiding its spontaneous development are a liberal encouragement of science and the arts, and a judicious system of popular education and industrial training; for as "knowledge is power," so is it at once the best of all riches and the most efficient producer of wealth.

(Smith's *Wealth of Nations*, Book II. ch. 3, with Notes by M'Culloch and Wakefield; Ricardo *On Political Eco-*

*nomy and Taxation*; M'Culloch, *Principles of Political Economy*; Professor Jones *On the Distribution of Wealth*; *Essays on some Unsettled Questions of Political Economy*, by John Stuart Mill.)

CAPTAIN (from the French *capitaine*; in Italian, *capitano*: both words are from the Latin *caput*, a head), in the naval service, is an officer who has the command of a ship of war, and, in the army, is one who commands a troop of cavalry or a company of infantry.

In military affairs the title of captain seems to have been originally applied, both in France and England, like that of General at present, to officers who were placed at the head of armies or of their principal divisions, or to the governors of fortified places. Père Daniel relates that it was at one time given to every military man of noble birth; and adds that, in the sense in which it is at present used, it originated when the French kings gave commission to certain nobles to raise companies of men, in proof of which he quotes an ordonnance of Charles V. This must have been before 1380, in which year that king died. In the English service the denomination of captain, in the same sense, appears to have been introduced about the reign of Henry VII., when it was borne by the officers commanding the yeomen of the guard, and the band of gentlemen pensioners. (Grose's *Military Antiquities*, vol. i.)

The established price of a captain's commission is, in the Life Guards, 3500*l.*; in the Dragoons, 3225*l.*; in the Foot Guards, with the rank of lieutenant-colonel, 4800*l.*; in the infantry of the line, 1800*l.*; and no officer can be promoted to the rank of captain until he has been two years an effective subaltern. The full pay of a captain in the Life and Foot Guards is 15*s.* per day; in the Dragoons 14*s.* 7*d.*; and in the Infantry of the Line is 11*s.* 7*d.* per day.

The duty of a captain is one of considerable importance, since that officer is responsible for the efficiency of his company in every qualification by which it is rendered fit for service; he has to attend all parades; to see that the clothing, arms, &c. of the men are in good

order, and that their pay and allowances are duly supplied. When the army is encamped, one captain of each regiment is appointed as captain for the day; his duty is to superintend the camp of his regiment, to attend the parading of the regimental guards, to visit the hospital, to cause the roll to be called frequently and at uncertain hours, and to report everything extraordinary to the commanding officer.

A high degree of responsibility rests upon the commander of a ship of war, since to him is committed the care of a numerous crew, with whom he has to encounter the dangers of the ocean and the chances of battle. And as the floating fortress with its costly artillery and stores, when transferred to the enemy, increases by so much his naval strength, it is evident that nothing but utter inability to prevent him from getting possession can justify the commander in surrendering. In the old French service the captain was prohibited from abandoning his ship under pain of death; and in action he was bound under the same penalty to defend it to the last extremity: he was even to blow it up rather than suffer it to fall into the enemy's power.

The pay of a captain in the navy varies with the rate of the ship, from 61*l.* 7*s.* per month for a first-rate, to 26*l.* 17*s.* for a sixth-rate. Commanders of sloops have 23*l.*, and a captain of marines 14*l.* 14*s.* per month.

From the book of general regulations and orders it appears that lieutenants of his majesty's ships rank with captains of the army. Commanders (by courtesy entitled captains) rank with majors. Captains (formerly designated post-captains) with lieutenant-colonels; but after three years from the dates of their commissions they rank with full colonels.

The rank of post-captain was that at which when the commander of a ship of war had arrived, his subsequent promotion to a *flag* took place only in consequence of seniority, as colonels of the army obtain promotion to the rank of general officers. Such captain was then said to be *posted*; but this title does not now exist.

Several petty-officers in a ship bear the

titles of captains. Thus there is a captain of the fore-castle, a captain of the hold, captains of the main and fore tops, of the mast, and of the afterguard.

CARDINAL (Italian, *Cardinale*), the highest dignity in the Roman church and court next to the pope. The cardinals are the electors of the pope, and his counsellors. The Latin word *Cardinalis* is used by Vitruvius in his description of doors. The word is derived from the Latin *cardo*, a hinge. The word was applied by the Latin grammarians to the cardinal numbers as we now call them, *one, two*, and so on. We also speak of the cardinal virtues, and the cardinal points, North, East, South, and West. The term *Cardo* was applied by the Romans, in their system of land-measurement, to a meridian line drawn from south to north. (Hyginus, in Goesii *Agrimensores*, p. 150.) The Roman Cardinals, says Richelet, are so called, because they are the hinges or points which support the church (*Dictionnaire*).

In the early times of the church this title was given to the incumbents of the parishes of the city of Rome, and also of other great cities. There were also cardinal deacons, who had the charge of the hospitals for the poor, and who ranked above the other deacons. The cardinal priests of Rome attended the pope on solemn occasions. Leo IV., in the council of Rome, 853, styled them "*presbyteros sui cardinis*." Afterwards the title of cardinal was given also to the seven bishops *suburbicarii*, or suffragan of the pope, who took their title from places in the neighbourhood of Rome, namely, Ostia, Porto, Santa Rufina, Sabina, Palestrina, Albano, and Frascati. These bishops were called *hebdomadarii*, because they attended the pope for a week each in his turn. The cardinals took part with the rest of the Roman clergy in the election of the pope, who was often chosen from among their number. About the beginning of the twelfth century, the popes having organized a regular court, bestowed the rank of cardinal priest or deacon on any individual of the clergy or even laity that they thought proper, whether Roman or foreign, and gave to each the title of some particular church of



Rome, without any obligatory service being attached to it. Thus they made the cardinals a separate body elected for life; and the officiating priests of the Roman parishes were by degrees deprived of the title of cardinals. Nicholas II., in 1159, issued a decree, limiting the right of election exclusively to the cardinals thus appointed by the pope, leaving, however, to the rest of the clergy and the people of Rome the right of approving of the election of the new pope, and to the emperor that of confirming it. In course of time, however, both these last prerogatives became disused. Alexander III., in 1179, issued a decree, requiring the unanimous vote of two-thirds of the cardinals to make an election valid. For a long time the bishops in the great councils of the church continued to take precedence of the cardinals. In France, Louis XIII., in the sitting of the parliament of Paris of the 2nd of October, 1614, first adjudged to the cardinals the precedence over the ecclesiastical peers or bishops, and abbots. This precedence, however, has been often contested. Pius V., in 1567, forbade any clergyman to assume the title of cardinal except those appointed by the pope. Sixtus V., in December, 1586, fixed the number of cardinals at seventy, namely, the six bishops suburbicarii above mentioned (the title of Santa Rufina being joined to that of Porto, and that of Velletri to Ostia), fifty cardinal priests, and fourteen deacons; some of these last, however, having merely the minor orders. All the cardinals, both priests and deacons, bear the title of a church of the city of Rome. Several of the cardinal priests are bishops of some particular diocese at the same time; still they bear the title of the particular church of Rome under which they were made cardinals. The body of the cardinals is styled the Sacred College. The number of seventy is seldom complete, the pope generally leaving some vacancies for extraordinary cases. Most of the cardinals who reside at Rome either enjoy ecclesiastical benefices or are employed in the administration, either spiritual or temporal; others belong to wealthy families, and provide for their own support; and those who have not the same means receive an allowance from

the Apostolic chamber or Papal treasury of one hundred dollars monthly. Several of the cardinals belong to monastic orders, some of whom even after their promotion, continue to reside in their respective convents. The establishment of a cardinal is generally respectable, but moderate: a carriage and livery-servants are however an obligatory part of it. They generally dress in a suit of black, in the garb of clergymen, but with red stockings, and a hat bordered with red. On public occasions their costume is splendid, consisting of a red tunic and mantle, a "rochetto" or surplice of fine lace, and a red cap or a red three-cornered hat when going out. Members of religious orders, if created cardinals, continue to wear the colour of their monastic habit, and never use silk. When the pope promotes a foreign prelate to the rank of cardinal, he sends him a messenger with the cap: the hat can only be received from the pope's own hands; the only exception is in favour of members of royal houses, to whom the hat is sent. Urban VIII., in 1630, gave to the cardinals the title of Eminence, which was shared with them by the grand master of the order of Malta, and the ecclesiastical electors of the German or Roman Empire only. The pope often employs cardinals as his ambassadors to foreign courts, and the individual thus employed is styled *Legate a Latere*. A cardinal legate is the governor of one of the Northern provinces of the Papal States, which are known by the name of Legations. The chief secretary of state, the camerlengo, or minister of finances, the vicar of Rome, and other leading official persons, are chosen from among the cardinals.

The Council of Cardinals, when assembled under the presidency of the pope to discuss matters of church or state, is called "Consistorium." There are public consistories, held on some great occasions, which correspond to the levees of other sovereigns, and private or secret consistories, which are the privy council of the pope.

In Moreri's Dictionary, art. "Cardinal," is a list of all the cardinals elected from 1119 till 1724, their names, countries,

titles, and other dignities, the date of their election, and that of their death, which may be found useful for historical reference. (*Relazione della Corte di Roma, nuovamente corretta*, Rome, 1824; Richard et Giraud, *Bibliothèque Sacrée*, Paris, 1822, art. "Cardinaux.")

**CARRIER**, one who for hire undertakes the conveyance of goods or persons for any one who employs him. In a legal sense it extends not only to those who convey goods by land, but also to the owners and masters of ships, mail-contractors, and even to wharfingers who undertake to convey goods for hire from their wharfs to the vessel in their own lighters, but not to mere hackney coachmen. [**HACKNEY-COACHES.**] For the liability and duties of proprietors of stage-coaches carrying passengers see **STAGE-COACHES**.

Carriers of goods are subjected to a greater degree of responsibility than mere bailees for hire, and that responsibility is much more extensive than it is in the case of injuries to passengers. By ancient custom (which is part of the common law of this country), a common carrier of goods for hire is not only bound to take goods tendered to him, if he has room in his conveyance, and he is informed of their quality and value, but he is in the same situation as one who absolutely insures their safety, even against *inevitable accident*; he is therefore liable for their loss, though he be robbed of them by a force which he could not resist, on the principle that he might otherwise contrive purposely to be robbed of or to lose the goods, and himself to share the spoil. There are however three exceptions to this liability: 1, loss arising from the king's *public* enemies; 2, loss arising from the act of God, such as storm, lightning, or tempest; 3, loss arising from the owner's own fault, as by imperfect interior packing, which the carrier could not perceive or remedy.

As property of large value may be compressed into a small space and transmitted by carriers, they have in modern times endeavoured by notices to lessen the extensive charge that the common law cast upon them. The notice that they were

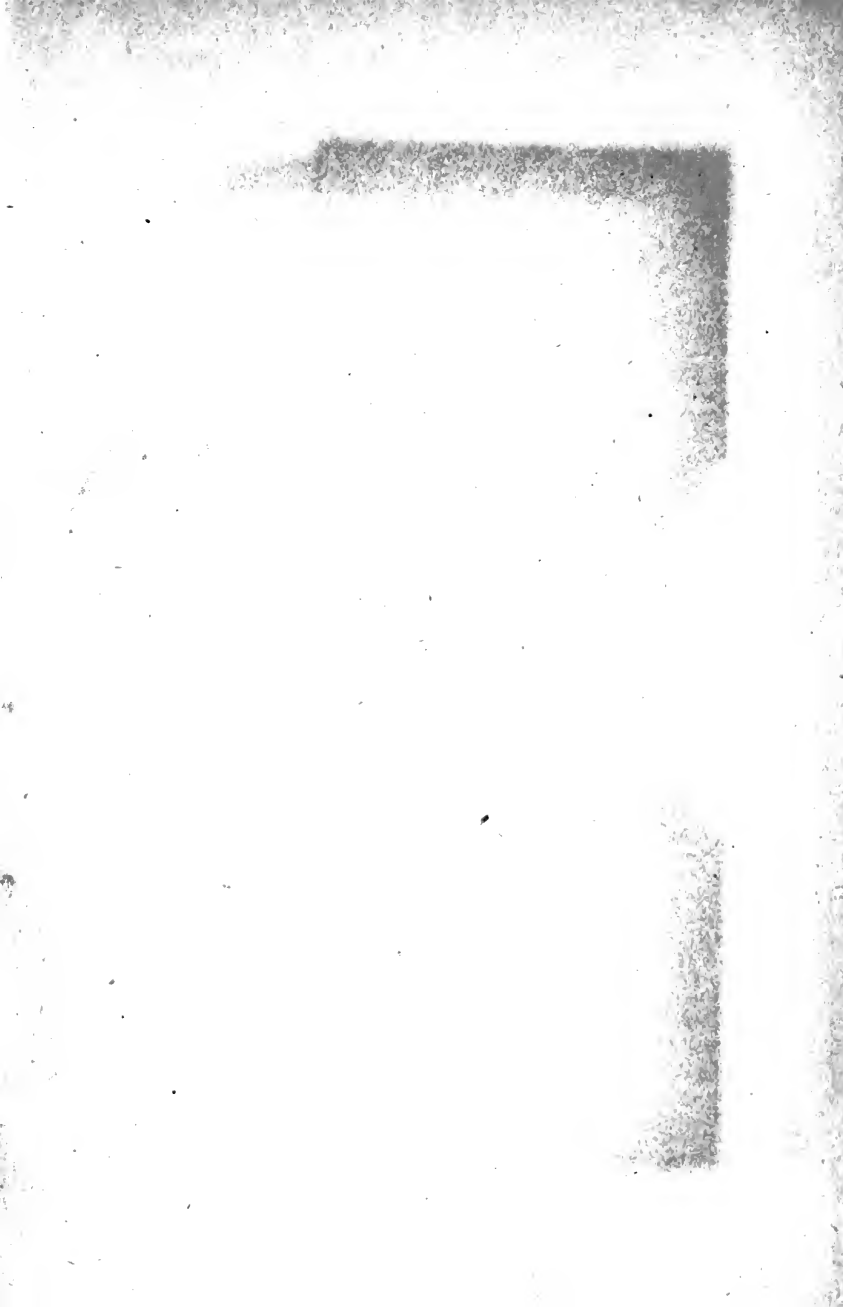
in the habit of giving usually stated in substance that the carrier would not be responsible for goods above a certain value (generally 5*l.*), unless entered and paid for accordingly. After repeated discussions in courts of justice, on the effect of these notices, the carriers succeeded in establishing, that they would not be liable in the above circumstances, if they could *prove* explicitly, in each instance, full knowledge on the part of the person who sent the goods, or his agent, of this specific qualification of their general liability. But proof of this fact was in all cases most difficult to give, and to obviate this difficulty the statute 11 Geo. IV. and 1 Will. IV. c. 68, was passed, by which it is enacted that no common carrier by *land* shall be liable for the loss of, or injury to, certain articles, particularly enumerated in the act, contained in any package which shall have been delivered, either to be carried for hire, or to accompany a passenger, when the value of such article shall exceed the sum of 10*l.*, unless, at the time of the delivery of the package to the carrier, the value and nature of such article shall have been explicitly declared. In such case the carrier may demand an increased rate of charge, a table of which increased rates must be affixed in legible characters in some public and conspicuous part of the receiving office; and all persons who send goods are bound by such notice without further proof of the same having come to their knowledge.

The Carriers' Act applies only to carriers by *land*, and the liability of carriers by sea is the common liability before explained, slightly modified. [**SHIPS.**]

Upon the general principle that persons who, at the request of their owners, bestow money or labour on goods can detain them until those charges are paid, a carrier can refuse to deliver up goods, which have come into his possession as a *carrier*, until his reasonable charges for the carriage are paid. This in law is called a *particular lien*, in contradiction to a *general lien*. [**LIEN.**]

(Sir William Jones on *Bailments*; Selwyn's *Nisi Prius*, title *Carrier*; and Chitty on *Contracts not under seal*, title *Carrier*.)

**CASH CREDIT.** [**BANK**, p. 278.]





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